**Calendar No. 552**

97TH CONGRESS } SENATE { REPORT
2d Session } { No. 97-389

# DISTRIBUTION AND DRAINAGE FACILITIES, CENTRAL ARIZONA PROJECT, ARIZONA

MAY 12 (legislative day, MAY 11), 1982.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

## REPORT

[To accompany S. 2177]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2177) to amend title III of the Colorado River Basin Project Act, Public Law 90-537 (82 Stat. 885), as amended by Public Law 95-578 (92 Stat. 2471), and Public Law 96-375 (94 Stat. 1505) having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

As introduced, S. 2177 would amend Section 309(b) of the Colorado River Basin Project Act (Act of September 30, 1968) as amended, to provide that the existing authorization for the appropriation of $100 million for construction of distribution and drainage facilities for the Central Arizona Project may be indexed to reflect changes in costs due to inflationary trends or normal fluctuations in costs for construction of facilities of a similar nature.

### BACKGROUND AND NEED

Included in Title III of the Colorado River Basin Project Act is authorization of the Central Arizona Project. Section 309(a) of the Act authorized appropriations for construction of the principle features of the project. Section 309(b) authorized appropriations for construction of distribution and drainage facilities. The authorizing language for the major project features included "boilerplate" language to allow for indexing to reflect changes in costs but the authorization for the distribution and drainage facilities did not; hence, the authorization is "frozen" at the $100 million level and does not reflect

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the changes in costs experienced over the past 15 years and is inadequate to undertake the works authorized.

The distribution and drainage facilities are the key project elements remaining to be built and will allow for the utilization of previously constructed facilities. Without the appropriate indexing, necessary facilities cannot be constructed and the project will be inoperable.

## Legislative History

S. 2177 was introduced on March 8, 1982, by Senators DeConcini and Goldwater. A hearing was held before the Subcommittee on Water and Power on April 22, 1982, at which time the Administration endorsed the measure without amendment.

## Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business meeting on May 5, 1982, by unanimous vote of a quorum present recommended that the Senate pass S. 2177 as described herein.

The roll call vote on reporting the measure was 17 yeas and 0 nays as follows:

| YEAS | NAYS |
|---|---|
| Mr. McClure | |
| Mr. Hatfield[1] | |
| Mr. Weicker[1] | |
| Mr. Domenici[1] | |
| Mr. Wallop | |
| Mr. Warner | |
| Mr. Humphrey | |
| Mr. Murkowski | |
| Mr. Nickles | |
| Mr. East | |
| Mr. Heinz[1] | |
| Mr. Jackson | |
| Mr. Johnston[1] | |
| Mr. Ford | |
| Mr. Matsunaga | |
| Mr. Melcher[1] | |
| Mr. Bradley | |

[1] Indicates vote by proxy.

## Cost and Budgetary Considerations

The following estimate of costs associated with this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
*Washington, D.C., May 10, 1982.*

Hon. James A. McClure,
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.*

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2177, a bill to amend title III of the

Colorado River Basin Project Act, Public Law 90–537 (82 Stat. 885), as amended by Public Law 95–578 (92 Stat. 2471), and Public Law 96–375 (94 Stat. 1505).

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director*.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 2177.

2. Bill title: A bill to amend title III of the Colorado River Basin Project Act, Public Law 90–537 (82 Stat. 885), as amended by Public Law 95–578 (92 Stat. 2471), and Public Law 96–375 (94 Stat. 1505).

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, May 5, 1982.

4. Bill purpose: This bill amends the Colorado River Basin Project Act to allow indexing of the original $100 million authorization for construction of drainage and distribution systems to reflect ordinary fluctuations in construction costs.

5. Cost estimate:

| | *Millions* |
|---|---|
| **Estimated authorization level:** | |
| **Fiscal year:** | |
| **1983** | **$220** |
| **1984** | **2** |
| **1985** | **8** |
| **1986** | **11** |
| **1987** | **34** |
| **After 1987** | **99** |
| **Estimated outlays:** | |
| **Fiscal year:** | |
| **1983** | **5** |
| **1984** | **8** |
| **1985** | **30** |
| **1986** | **33** |
| **1987** | **89** |
| **After 1987** | **209** |

The costs of this bill fall within budget function 300.

6. Basis of estimate: For the purpose of this estimate it is assumed that the full amount authorized will be appropriated incrementally as funds become necessary. The Colorado River Basin Project Act of 1968 authorized the appropriation of $100 million for loans to water districts for the construction of drainage and distribution systems. Construction work on these systems has not been initiated because water from the Colorado River Basin Project is not scheduled to become available for irrigation prior to fiscal year 1985. This bill amends the Act of 1968 to allow adjustments to the original $100 million authorization to reflect ordinary fluctuations in construction costs. The Bureau of Reclamation estimates that indexing the original $100 million would bring the authorization level to $320 million in 1982 dollars. It is expected, however, that work on the drainage and distribution systems will take about 10 years, therefore, the indexing provision will result in additional authorizations and outlays over the construction period. Based on CBO's projected construction cost increases, it is estimated that S. 2177 will increase the total outlays

incurred by the federal government for the construction of distribution and drainage systems related to the Colorado River Basin Project by approximately $374 million.

Water districts must repay the federal government for the investment in the distribution system over a period of time not exceeding 40 years after water delivery begins. The repayment is included in the rate charged for the water delivered by the federal government. However, it is not expected that any water districts will begin repayment prior to fiscal year 1987.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Debbie Goldberg.
10. Estimate approved by:

C. G. Nuckols
(For James L. Blum,
Assistant Director for Budget Analysis).

## Executive Communications

Although S. 2177 was referred to the Department of the Interior and the Office of Management and Budget on March 10, 1982, for comment, no legislative reports were received. However, following is the statement submitted for the Department of the Interior at the Subcommittee hearing on April 22, 1982.

## Statement of Robert N. Broadbent, Commissioner, Bureau of Reclamation

Mr. Chairman and members of the subcommittee. I am appearing today to present the views of the Department of the Interior on S. 2177 which would provide for cost indexing of the construction cost of the non-Indian distribution system of the Central Arizona Project.

The bill is a proposed amendment to Public Law 90–537 (82 Stat. 885), as amended by Public Law 95–578 (92 Stat. 2471) and Public Law 96–375 (94 Stat. 1505). The 1968 public law provides for a project appropriation ceiling with indexing for all features of the project except the non-Indian distribution system, which in Sec. 309(b) was funded for only $100,000,000 with no such indexing provision.

We support the passage of the bill. However, even with the indexing provided in the bill, the total estimated cost of the non-Indian distribution system would exceed the indexed appropriation ceiling. With the indexing, the funding under the new ceiling would be about $320,000,000 while the current estimated costs for the non-Indian distribution system are about $550,000,000.

Mr. Chairman, this completes my statement. I would be pleased to answer any question you may have.

## Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred on the passage of S. 2177.

It is the Committee's expressed opinion that the bill is not a regulatory measure in the sense of imposing Government established standards or significant responsibilities on private individuals or businesses and that little, if any, additional paperwork would result from enactment of S. 2177 other than that which would normally be associated with such a Federal construction and contracting program.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 2177, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

An act to authorize the construction, operation, and maintenance of the Colorado River Basin project, and for other purposes (Act of September 30, 1968, 82 Stat. 885, Public Law 90–537) as amended.

* * * * * * *

SEC. 309(b). There is also authorized to be appropriated $100,000,000 for construction of distribution and drainage facilities for non-Indian lands [.] *plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering and cost indices applicable to the types of construction involved therein from the date of the Colorado River Basin Project Act.*

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**Calendar No. 557**

97TH CONGRESS } SENATE { REPORT
2d Session } { No. 97-393

# ENERGY EMERGENCY PREPAREDNESS

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MAY 13 (legislative day, MAY 11), 1982.—Ordered to be printed

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Mr. MCCLURE, from the Committee on Energy and Natural Resources,
submitted the following

# REPORT

together with

## ADDITIONAL AND MINORITY VIEWS

[To accompany S. 2332]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2332) to extend the expiration date of section 252 of the Energy Policy and Conservation Act, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert the following:

### EXTENSION OF CERTAIN INTERNATIONAL ENERGY PROGRAM AUTHORITIES

SECTION 1. Subsection (j) of section 252 of the Energy Policy and Conservation Act (42 U.S.C. 6272(j)) is amended by striking out "June 1, 1982" and inserting in lieu thereof "August 1, 1983".

### ENERGY EMERGENCY PREPAREDNESS

SEC. 2. (a) Title II of the Energy Policy and Conservation Act, relating to Standby Energy Authorities, is amended by adding at the end thereof the following new part:

### "PART C—ENERGY EMERGENCY PREPAREDNESS

### "CONGRESSIONAL FINDINGS, POLICY, AND PURPOSES

"SEC. 271. (a) FINDINGS.—The Congress finds that—

"(1) a shortage of petroleum products caused by reductions in imports of petroleum products may occur at any time;

"(2) such a shortage may be sufficiently large to cause severe economic dislocations and hardships, or constiute a serious threat to public health, safety, and welfare; and

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"(3) in the event of such a shortage, reliance on free market pricing and allocation of available petroleum product supplies may not be adequate to mitigate the adverse impacts of the shortage.

"(b) POLICY.—The Congress hereby declares that it shall be the policy of the United States that a Federal comprehensive energy emergency response procedure shall be available for implementation by the President, pursuant to his authorities under existing law other than this Part, as a supplement to reliance on the free market to mitigate the adverse impacts of a shortage of petroleum products on public health, safety, and welfare.

"(c) PURPOSE.—The purpose of this Part is to provide for the preparation of a comprehensive energy emergency response procedure to be available for use by the President under authorities contained in existing law other than this Part;

### "STATUS REPORT

"SEC. 272. (a)(1) The President shall submit to the Congress no later than November 15, 1982—

"(A) a memorandum of law, subject to subsection (b), describing the nature and extent of the authorities under existing law available to the President for his use in responding to a substantial reduction in the amount of petroleum products available to the United States; and

"(B) an accompanying report, subject to subsection (b), on the status and schedules for completion of a comprehensive energy emergency response procedure by which the President would implement the authorities described under paragraph (1).

"(2) The memorandum of law required by subparagraph (1)(A) shall be reviewed and approved by the Attorney General prior to its submission to the Congress.

"(b) The memorandum of law and the accompanying report submitted to the Congress pursuant to subsection (a) shall—

"(1) include, but not be limited to, the following subjects—

"(A) activities of the United States in support of the International Energy Program and the December 10, 1981 International Energy Agency agreement entitled 'Decision on Preparation for Future Supply disruptions' including, but not limited to—

(i) the National Emergency Sharing Organization,
(ii) Emergency sharing systems; and
(iii) the supply right project.

"(B) activities of the United States pursuant to its energy emergency preparedness obligations to the North Atlantic Treaty Organization;

"(C) development and use of the Strategic Petroleum Reserve;

"(D) Government incentives to encourage private petroleum product stocks;

"(E) reactivation of the Executive Manpower Reserves, including the—

(i) Emergency Electric Power Reserve;
(ii) Emergency Petroleum and Gas Reserve; and
(iii) Emergency Solid Fuels Reserve;

"(F) energy emergency response management in coordination with State and local governments; and

"(G) emergency public information activities; and

"(2) distinguish among—

"(A) situations involving limited or general war, international tensions that threaten national security, and other Presidentially-declared emergencies;

"(B) events resulting in activation of the International Energy Program; and

"(C) events or situations less severe than those described in subparagraphs (A) and (B).

### "COMPREHENSIVE ENERGY EMERGENCY RESPONSE PROCEDURE

"SEC. 273. (a) The President is authorized and directed to submit to the Congress no later than December 31, 1982, a comprehensive energy emergency response procedure, subject to subsection (b), which the President would implement, in whole or in part, pursuant to his authorities under existing law other than this Part, in responding to a substantial reduction in the amount of petroleum products available to the United States.

"(b) The comprehensive energy emergency response procedure shall—

"(1) specify a procedure for determining appropriate governmental actions in response to international and domestic energy shortages;

"(2) describe alternative actions available for implementation by the President; and

"(3) recommend any additional statutory authority necessary for the President to carry out the purposes of this Part.

"(c) Nothing in this Part, or in the comprehensive energy emergency response procedure submitted pursuant to subsection (b), shall limit the authority of the President under existing law to respond to a reduction in the amount of petroleum products available to the United States.".

(b) The table of contents for the Energy Policy and Conservation Act is amended by adding after the item relating to section 255 the following new items:

"PART C—ENERGY EMERGENCY PREPAREDNESS

"Sec. 271. Congressional Findings, Policy, and Purposes.
"Sec. 272. Status Report.
"Sec. 275. Comprehensive Energy Emergency Response Procedure.".

### STRATEGIC PETROLEUM RESERVE DRAWDOWN PLAN

SEC. 3. On or before September 30, 1982, the President shall transmit to the Congress a drawdown plan for the strategic petroleum reserve consistent with the requirements of section 154 of the Energy Policy and Conservation Act. Congressional review of such drawdown plan shall be in accordance with the provisions of section 159 of the Energy Policy and Conservation Act: *Provided*, That the existing approved drawdown plan shall remain effective until a new drawdown plan is approved pursuant to section 159 of the Energy Policy and Conservation Act.

### STRATEGIC PETROLEUM RESERVE AMENDMENTS

SEC. 4. (a) Section 160(c) of the Energy Policy and Conservation Act (42 U.S.C. 6240(c)) is amended to read as follows:

"(c)(1) The President shall, subject to the availability of funding pursuant to Section 167(b)(2) of the Energy Policy and Conservation Act, as amended by Section 1034(a)(1) of the Omnibus Reconciliation Act of 1981 (Public Law 97–35), immediately undertake, and thereafter continue, petroleum products acquisition, transportation, and injection activities at a level sufficient to assure that petroleum products in permanent or interim storage facilities in the Strategic Petroleum Reserve will be increased at an average annual rate of at least 300,000 barrels per day until the quantity of petroleum products stored within the Strategic Petroleum Reserve is at least 500,000,000 barrels.

"(2) After the Strategic Petroleum Reserve reaches a level of 500,000,000 barrels, the President shall seek to continue petroleum products acquisition, transportation, and injection activities at a level sufficient to assure that petroleum products in permanent or interim storage facilities in the Strategic Petroleum Reserve will be increased at an average annual rate of at least 300,000 barrels per day until the quantity of petroleum products stored within the Strategic Petroleum Reserve is at least 750,000,000 barrels.".

(b) The effective date of subsection (a) shall be July 1, 1982.

(c) Section 159(f) of the Energy Policy and Conservation Act (42 U.S.C. 6240(f)) is amended by deleting the word "and" at the end of paragraph (3), by inserting a ";" in lieu of the "," at the end of paragraph (4), and by inserting a new paragraph (5) as follows:

"(5) the storage of petroleum products in interim storage facilities,".

(d) Section 167 of the Energy Policy and Conservation Act (42 U.S.C. 6247) is amended by adding at the end thereof the following:

"(e) Not to exceed 10 per centum of the total amounts obligated from the Account in any fiscal year may be used to meet expenses related to interim facilities for the storage of petroleum products for the Strategic Petroleum Reserve.

"(f) Nothing in this part shall require an amendment to the Strategic Petroleum Reserve Plan prior to the storage of petroleum products in interim storage facilities.

"(g) No action related to the storage of petroleum products in existing facilities for interim storage in the Strategic Petroleum Reserve shall be deemed to be 'a major Federal action significantly affecting the quality of the human environment' within the meaning of that term as it is used in section 102(2)(C) of the National Environmental Policy Act of 1969.

"(h) Petroleum products stored in interim storage facilities pursuant to section 160(c)(1) shall be considered to be in storage in the Strategic Petroleum Reserve.".

### IMPACT STUDY

SEC. 5. (a) The President shall analyze the impact on the domestic economy and on consumers in the United States of reliance on market allocation and pricing during a severe oil supply shortage. Such analysis shall—

(1) examine the equity and efficiency of such reliance,

(2) distinguish between the impacts of such reliance on various categories of business (including small business and agriculture) and on households of different income levels,

(3) specify the nature and administration of monetary and fiscal policies that would be followed including emergency tax cuts, emergency block grants, and emergency supplements to income maintenance programs, and

(4) describe the likely impact on the distribution of petroleum products of State and local laws and regulations (including emergency authorities) affecting the price or allocation of petroleum.

Projections must be made of the effect of the disruption on the price of motor gasoline, home heating oil and diesel fuel and on Federal tax revenues, Federal royalty receipts and State and local tax revenues.

(b) Within one year after the date of the enactment of this section, the President shall submit a full and detailed report to the Congress containing the analysis required by subsection (a), including a detailed, step-by-step description of the procedures by which the policies specified in subsection (a)(3) would be accomplished in an emergency, along with such recommendations as the President deems appropriate.

### CONTINUATION OF PETROLEUM PRODUCT INFORMATION COLLECTION

SEC. 6. (a) Part A of title V of the Energy Policy and Conservation Act (42 U.S.C. 6381 et seq.) is amended by adding at the end thereof the following new section:

### "PETROLEUM PRODUCT INFORMATION

"SEC. 507. The President or his delegate shall, pursuant to authority otherwise available to the President or his delegate under any other provision of law, collect information on the pricing, supply, and distribution of petroleum products at the wholesale and retail levels, on a State-by-State basis. Such information shall be substantially of the same type as was collected during September 1981 by the Energy Information Administration in connection with the Emergency Petroleum Allocation Act of 1973.".

(b) The table of contents for the Energy Policy and Conservation Act is amended by adding after the item relating to section 506 the following new item:

"Sec. 507. Petroleum Product Information.".

2. Amend the title so as to read:

A bill to amend the Energy Policy and Conservation Act to extend certain authorities relating to the International Energy Program, to provide for the Nation's energy emergency preparedness and for other purposes.

## I. PURPOSE OF THE MEASURE

The purpose of this measure, as reported by the Committee on Energy and Natural Resources, is to amend the Energy Policy and Conservation Act to extend certain authorities relating to the International Energy Program, to provide for the Nation's energy emergency preparedness through the preparation of a comprehensive energy emergency response procedure under the authorities available to the President under existing law other than this Part; to assure that Strategic Petroleum Reserve petroleum acquisition will be at an annual average rate of at least 300,000 barrels per day until at least 500 million barrels are in storage; and for other purposes.

## II. SUMMARY OF MAJOR PROVISIONS

The major provisions of S. 2332, as reported would:

(1) Establish as the policy of the United States that a Federal comprehensive energy emergency response procedure shall be available for implementation by the President pursuant to his authorities under existing law other than this Part, as a supplement to reliance on the free market to mitigate the adverse impacts of a shortage of petroleum on public health, safety, and welfare;

(2) Provide for the preparation of a comprehensive energy emergency response procedure under the authorities available to the President under existing law; other than this Part;

(3) Extend the expiration date of the antitrust defense under section 252 of the Energy Policy and Conservation Act to August 1, 1983;

(4) Require the President to acquire petroleum for the Strategic Petroleum Reserve at an annual average rate of at least 300,000 barrels per day until the quantity stored in the Reserve is at least 500 million barrels;

(5) Provide for an analysis of the impact on the domestic economy and on consumers in the United States of reliance on market allocation and pricing during a severe petroleum supply shortage; and

(6) Require the collection, under other provisions of law, on a State-by-State basis of information regarding the wholesale and retail prices, supplies, and distribution of petroleum products.

## III. BACKGROUND AND NEED

### GENERAL

The Committee on Energy and Natural Resources has a long history of serious concern about the energy emergency preparedness of the United States. That concern dates back to the early 1970's with the series of energy emergencies beginning with the Organization of Arab Petroleum Exporting Countries (OAPEC) embargo of 1973, the natural gas shortage in the winter of 1976–1977, the coal strike in the winter of 1977–1978, the Iranian revolution in 1979, and the Iran-Iraq war in the fall of 1980. All of those experiences have convinced the Committee of the need for prior preparation and planning to provide a quick and predictable response to any particular emergencies facing the United States.

This interest continues today, even during a period when some observers are complacent about the future of the international oil market. A brief respite from ever-increasing oil prices must not be allowed to make us complacent about the future of the international oil market, and the effect that changes in that market could have on the well-being of our Nation.

As Robert D. Hormats, the Assistant Secretary of State for Economic and Business Affairs, testified before the Committee on May 6, 1982,

> The long-term threat of serious harm to the economies of the United States and its allies from a world oil supply interruption has not abated. Despite a drop in prices, the threat of a disruption is a real one which we can ignore only at our peril.

When Congress approved S. 1503, the Standby Petroleum Allocation Act of 1982, that bill represented Congress' best judgment concerning the extent of standby allocation authority and the types of programs that the President should have available in the event of a serious emergency. After that bill was vetoed and the veto sustained, the Committee turned its attention to an indepth review of the United States' energy preparedness. Such an inquiry is particularly appropriate as the United States is now dependent on the marketplace, and, as the President noted, on the general powers that can be used by the President to protect national security, meet our treaty obligations and assure essential public health and safety functions.

The Committee's review of United States' energy preparedness focused on a number of programs which are described in detail below.

The Committee began this inquiry into the United States' energy emergency preparedness with a review of the related domestic and international programs of the Department of Energy.

On May 7, 1982, the Committee held a hearing on S. 2332, a bill to extend the IEA antitrust defense to July 1, 1983, and on printed amendments thereto. Witnesses from the General Accounting Office, the Departments of State, Justice, and Energy, and the Americans for Energy Independence appeared.

The witnesses were requested to examine, (a) the United States' energy emergency preparedness activities, (b) the International Energy Program and the United States participation in that program, (c) the agreements and commitments currently encompassed within the international energy program, including responses to "subtrigger" supply problems, and (d) the importance of extending the antitrust exemption contained in section 252 of said Act and the appropriateness of the proposed expiration date, July 1, 1983. In addition, the witnesses were asked to address the energy emergency activities and accomplishments discussed on March 31, 1982 in the testimony of Assistant Secretary William A. Vaughan, before the Appropriations Subcommittee on Interior and Related Agencies.

The hearing focused on the Administration's preparation and planning for a future energy supply disruption. When President Reagan vetoed S. 1503, the Standby Petroleum Allocation Act, he stated that the bill was unnecessary because he has ample authority under existing law to address an energy supply emergency and that the SPR will provide a backstop for our economy in the event of an oil supply disruption.

This discussion outlines the extent of the Administration's energy emergency contingency planning.

## INTERNATIONAL ENERGY AGENCY

The Department of Energy is engaged in energy emergency preparedness activities on the international front, in conjunction with the Department of State, through the International Energy Program (IEP).

The 1974 Agreement on an International Energy Program provided a plan for the sharing of oil imports among major oil consuming nations in time of emergency. Provision was made for emergency petroleum reserves as well as the necessary measures for the allocation of available crude oil and products. That authority still exists in the event the IEA 7 percent trigger is activated.

The Agreement on an International Energy Program resulted from talks among a number of oil consuming nations in the aftermath of the 1973–74 Arab oil embargo. The United States and other industrialized nations decided that coordinated action aimed at minimizing the effects of potential oil supply disruptions was needed. Consequently, after lengthy negotiations, the United States and 15 other countries entered into the IEP Agreement in Paris on November 18, 1974. Since that time the total number of participating nations has increased to 21.

The IEP established the International Energy Agency (IEA) as an autonomous institution within the Organization for Economic Cooperation and Development which is an international organization headquartered in Paris and composed of mainly Western European countries, Canada, Japan and the United States. The IEA is responsible for coordinating the information gathering and emergency oil sharing systems created by the IEP. It is directed by a Governing Board comprised of representatives of the IEA Member Governments, and maintains a multinational staff, the IEA Secretariat, which is responsible for the daily operations of the Agency.

The centerpiece of the IEP Agreement is a cooperative system to handle oil supply disruptions. Use of the system can be triggered when either an individual nation or the IEP signatories collectively experience a shortfall in oil supplies that is equivalent to seven percent or more of a base period final consumption calculated under procedures agreed upon by member nations. When put into action, the system involves the equitable sharing of oil according to a carefully constructed formula set forth in the IEP. During supply uncertainties, a special emergency information system (the Questionnaire A and B system, QA and QB) is activated and oil companies and governments supply the IEA data on oil production, consumption, imports and exports. This information is used to determine whether to trigger the sharing system and, if triggered, how to allocate available oil.

The IEP also provides for the establishment of a general or nonemergency information system to enable IEA member governments to monitor continuously various types of information on the international oil market, such as crude oil and petroleum product prices and costs, as well as volumes and sources of imports into IEA countries.

The IEP clearly envisions that it would be necessary to seek advice and assistance from the international oil industry in order to implement the emergency allocation system and the special (emergency) and general (nonemergency) information gathering systems set forth in the international agreement. Three oil industry groups have been established by the IEA to assist it and various of its governmental standing committees in carrying out their duties. Principal among these is the Industry Advisory Board (IAB), which is composed of 17 representative international oil companies from Europe, Asia and North America. The IAB's principal function is to advise the IEA on the design and implementation of emergency oil allocation procedures, including the emergency information systems needed to determine when to trigger and how to allocate oil under such procedures (QA's and QB's).

Another industry group, the Industry Working Party, assists in implementing non-emergency related information systems in the international oil market as set forth in Chapter V of the IEP Agreement. The third industry group assisting the IEA is the Industry Supply Advisory Group (ISAG). It is made up of representatives from IEA reporting companies and is responsible for industry participation in the emergency oil allocation system. It will, under the guidance of the Executive Director of the IEA coordinate voluntary rearrangements of supplies by reporting companies, including independent development of transactions in order better to direct supplies to meet IEA-calculated supply rights. The ISAG has a manager who is responsible for its overall direction with guidance from the IEA.

## "SUBCRISIS" SUPPLY DISRUPTIONS

During 1981, the IEA considered the question of how member countries might best respond to so-called "subcrisis situations." A subcrisis situation is a disruption in oil supplies short of the 7 percent shortfall which is necessary to activate the formal IEA Emergency Sharing System.

Since the IEA was established, member countries have suffered two serious oil supply disruptions—the shortfall which occurred in the wake of the 1978–79 Iranian Revolution, which resulted in an initial loss of almost 5 million barrels per day (MMB/D) and the shortfall precipitated by the 1980–81 Iran-Iraq war, which resulted in an initial loss of approximately 4 MMB/D. Neither shortfall resulted in activation of the IEA Emergency Sharing System. These shortfalls nevertheless prompted IEA members to consider how the IEA might respond to future "subcrisis" situations. This review was undertaken early in 1981 and culminated on December 10, 1981, when the Governing Board of the International Energy Agency (which includes the United States) reached a decision which would serve as a basis for future consultations in the event of a subcrisis supply disruption.

The Decision has several primary features:

- —Recognition that allowing market forces to operate and strengthening them will greatly counteract the effects of supply disruptions;
- —Agreement among IEA countries that they will meet promptly to consider and decide on what action, if any, is necessary to supplement market forces;

—An understanding that such actions must be consistent with national laws and the IEP;
—Agreement that IEA governments will individually consult with their oil companies concerning the nature of this supplementary action;
—Establishment of an oil market monitoring system which will allow the IEA to conduct an accurate and timely assessment of the nature and probable impact of supply disruptions; and
—Decision to further study various aspects of oil stocks including the general adequacy of IEA stock levels and the need to maintain stock levels in spite of temporary declines in oil imports.

The following statement was made by the U.S. delegation to the December Governing Board to clarify the U.S. understanding of the Decision:

> The United States welcomes this decision. At the same time we must state for the record our understanding of it. The United States remains committed to reliance on free market forces as the most effective response to supply disruptions. We are pleased to note the inclusion of this thought in a preamble to the Decision as a guiding principle for IEA discussions of market disruptions. The Decision establishes a basis for future IEA consultations in the event of sub-trigger supply disruptions. However, it does not commit IEA countries in advance as to the specific actions which they might take in such circumstances. Moreover, we note the fact that any actions taken in response to future disruptions must be consistent with national law and the Agreement on an International Energy Program, and that this may vary from country to country.

### EXTENSION OF SECTION 252 OF EPCA

Section 252 of the Energy Policy and Conservation Act (EPCA) authorizes U.S. oil companies to participate in voluntary agreements for implementing the allocation and information provisions of the Agreement on an International Energy Program. That program provides a mechanism for an oil allocation system to be utilized by the participating countries in the event of a major oil supply disruption. Section 252 also provides a limited defense against any antitrust suits that may be brought against U.S. oil companies participating in the International Energy Program. The antitrust defense is limited to actions taken in implementing the allocation and information provisions of the program.

Section 252 of EPCA sets out procedures applicable to the development or carrying out of voluntary agreements and plans of action to implement the allocation and information provisions of the International Energy Program. Under this authority, U.S. oil companies entered into the voluntary agreement and plan of action to implement the International Energy Program. At present, 21 U.S. oil companies, including both major international oil companies and independent oil companies, are participants in the voluntary agreement.

The antitrust defense made available by section 252(f) is essential to the participation of the U.S. oil companies in the voluntary agreement and, through it, in the IEP. In the absence of the antitust defense, the extensive oil industry involvement in the IEP raises possible antitrust risk for U.S. oil companies called upon to assist the IEA in carrying out the functions given to it by the member governments. In order to secure effective participation by the U.S. oil companies, Congress in 1975 provided participating companies a limited antitrust defense for certain actions taken in furtherance of the IEA's mission. This antitrust defense is limited in three important ways:

(1) actions by companies must be taken in the course of implementing only the allocation and information provisions of the IEP;

(2) such actions must also be taken only in the context of developing or carrying out an approved voluntary agreement or plan of action; and

(3) such actions must not be taken for the purpose of injuring competition.

In addition, approval of a voluntary agreement or plan of action by the Attorney General, after consultation with the Federal Trade Commission, is required before a voluntary agreement or plan of action may be carried out.

In addition to the direct limitations on the extent of the antitrust defense, EPCA imposes numerous antitrust safeguards upon the participation of U.S. oil companies in IEA activities. These safeguards include prior notification of industry meetings, attendance by U.S. Government observers, and the compilation of full and complete records of such meetings, including verbatim transcripts where practicable. In addition, the Attorney General (along with the Federal Trade Commission) is directed to monitor the implementation of voluntary agreements and plans of action authorized under Section 252 of EPCA.

The IEP can function effectively only with participation by U.S. and foreign oil companies which are primary sources of information about conditions in the international oil market and would be the primary actors in redistributing oil if the IEP's emergency sharing provisions were activated. If section 252 is allowed to expire, U.S. oil companies participating in the International Energy Program would be compelled to cease their participation in the program. In the past 2 months, the Departments of State and Energy have again solicited the views of the oil companies regarding termination of section 252. Without exception, the companies have stated that, absent the protection afforded by section 252, they would not participate in the IEA's allocation and information systems. If that should occur, the allocation mechanism of the program could not operate effectively in the event of any new disruption of oil supplies in the international oil market. Thus, as long as there remains a need for intergovernmental cooperation on international energy matters, the statutory antitrust defense for U.S. oil companies participating in IEA programs should be continued.

### BENEFITS OF PARTICIPATION IN THE IEP

The United States receives a number of fundamental benefits from continued participation in the IEA programs. First the IEA emer-

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gency system provides an insurance policy for the American people against economic harm from an interruption of oil imports. That system provides an assurance that oil supplies remaining available in a crisis will be shared fairly among member countries according to an agreed formula. Thus it reduces the risk of a mutually destructive competitive scramble for those supplies.

Under the terms of the IEA's emergency oil allocation system the United States has the guarantee of its IEA partners that, in a major oil crisis, they will assure that the United States does not absorb a greater proportion of an oil supply shortfall than that which they themselves are absorbing. For this assurance we have in turn made a similar pledge. To the extent that the existence of this system contributes to the maintenance of calm and orderly markets for oil in a crisis, it may also help to alleviate the harmful effects of that crisis. Twice in the past decade, even relatively mild disruptions in oil supplies have triggered a rapid escalation in oil prices, which in turn have led to harmful increases in inflation and reductions in output.

The second benefit of U.S. participation in the IEA is in the area of its external national security interests. It has long been an axiom of American security doctrine that the safety of the United States is inextricably linked to that of its allies in Western Europe and in the Far East. Over the years the United States has made enormous sacrifices for and investments in the cohesion and solidity of those alliances. U.S. participation in the IEA and the U.S. commitment to sharing oil with our partners is one of the smaller of those investments.

Most of our allies are much more heavily dependent on imports than we to satisfy critical energy needs. The threat of interruption of those supplies is a serious one to them, and one which might be used to blackmail or harm them in ways deleterious to alliance interests. The United States could not stand idely by while a producing country was using its oil exports as a political weapon against a consuming country.

The third major benefits of participation in the IEA is the opportunity which it provides for consultation and cooperation between governments and oil companies. Prior to the 1973–74 oil crisis international oil companies went about the business of obtaining oil and importing it into IEA countries pretty much on their own. When the crisis began many governments discovered that they themselves were poorly informed about that business had no ready sources of information about it and were therefore not at all well equipped to deal with the crisis. Some manifested distrust of the international companies, fearing that they were discriminating among countries in allocating oil among their affiliates, or that they were conspiring to hold oil off the market in order to force up prices. The oil companies, operating under this cloud of suspicion, found themselves under pressure to distribute oil among consuming countries not on the basis of price and other normal market signals but instead on the basis of political pressures.

In the wake of the crisis, there was widespread support for change. Governments sought to improve their data on international oil trade so as to be in a better position to assess oil company activities and to act more forcefully in future oil crises. Some of them expressed frustration at dealing with companies whose globe-spanning activities placed them largely outside the reach of any one government. Companies meanwhile emphasized the need for governments to coordinate their responses to oil crises and to resolve international differences among themselves rather than forcing companies into the role of mediator.

The International Energy Agency responded to these needs. Its oil crisis response system provided a basis for inter-governmental collaboration and dispute resolution during crises. It also created a vehicle for government-company cooperation broader than any one government could achieve acting alone. Finally, it provided governments a source of information about oil company activities in the international oil trade during oil market crises.

The fourth benefit of U.S. participation in the IEA is that it provides a mechanism for coordination with other countries across the broad range of national energy policies. IEA countries have drawn substantially on IEA discussions and analyses in shaping their domestic energy policies. Thus, the IEA is a uniquely effective channel for communicating and debating national as well as international energy policy issues with the other industrial countries.

### DOMESTIC PROGRAMS

On the domestic front, the United States is now embarked on a policy of reliance on the marketplace for the allocation of energy supply shortages. The Department of Energy's emergency preparedness programs were reviewed in testimony of Assistant Secretary William A. Vaughan on March 31st before the Appropriations Interior Subcommittee. That statement laid out a series of new DOE initiatives now under way to deal with the domestic aspects of energy emergency preparedness, whether or not activated by the International Energy Program. Following that hearing detailed responses to questions for the record were submitted by the Department of Energy.

Subsequently the staff of the Committee on Energy and Natural Resources undertook a review of the following major new DOE initiatives:

New initiatives to coordinate Federal energy policies with the 50 states in the absence of statutory pre-emption;

Reliance on the Executive Manpower Reserves (the Emergency Electric Power Reserve, the Emergency Petroleum and Gas Reserve, and the Emergency Solid Fuels Reserve); pursuant to the Defense Production Act;

Use of the Defense Production Act for other than defense related activities;

Development of alternative drawdown approaches for the Strategic Petroleum Reserve;

Analysis of options to encourage the buildup of private petroleum stockpiles;

Establishment of a National Emergency (Oil) Sharing Organization to support IEA activities;

Analysis of import quotas and tariffs that can be implemented to reduce or eliminate IEA allocation obligations; and

Development of a National Oil Board initiative to support the U.S. commitment to the NATO Wartime Oil Organization.

A description of these initiatives, and others, provided to the Committee by the Department of Energy appears in the Appendix. These proposals must be closely examined on their individual merits and most importantly, as an integral part of our overall emergency preparedness planning for both domestic and international emergencies.

### *Strategic petroleum reserve*

In 1975 the Energy Policy and Conservation Act authorized the creation of a Strategic Petroleum Reserve which would contain up to one billion barrels of petroleum. While the Congress had set aside certain oil fields (Naval Petroleum Reserves) to satisfy national defense requirements in an emergency, it was clear after the Arab oil embargo that the Nation needed a Government-owned reserve of oil that could supply several million barrels of petroleum per day during an oil supply disruption. Only a Federal stockpile of oil as envisioned in the Strategic Petroleum Reserve could meet that requirement.

The Congress has taken a keen interest in the progress of various Administrations in filling the SPR. On several occasions the Congress has resorted to legislation in an effort to accelerate the pace of the SPR oil acquisition.

In June 1980 the Congress provided in the Energy Security Act of 1980 (Public Law 96–294) that unless the SPR oil acquisition reached at least 100,000 barrels per day then the Federal Government could not sell oil from the Elk Hills field. In effect the Congress was imposing a fiscal sanction on the Executive Branch in order to encourage the Administration to resume SPR oil purchases which had been suspended in May of 1979.

The Department of Energy took action under this legislation to arrange for the delivery of 37.2 million barrels over the period September 1980 to October 1981, nearly achieving compliance with the Energy Security Act.

On December 12, 1980 the Congress enacted Public Law 96–514, the Department of the Interior and Related Agencies Appropriations for the fiscal year ending September 30, 1981, to require the President "to seek" to fill the SPR at a minimum average daily fill rate of 300,000 barrels per day or at a rate that would fully utilize appropriated funds.

In the Omnibus Budget Reconciliation Act of 1981 the Congress included the Strategic Petroleum Reserve Amendments of 1981. These amendments included a requirement that the President "immediately seek to undertake and thereafter continue . . . crude oil acquisition, transportation, and injection activities . . . at an average annual rate of at least 300,000 barrels per day." In essence the 300,000 barrel per day target was incorporated into the SPR enabling legislation. This fill rate requirement applies until the SPR contains 750 million barrels. Another amendment created an off-budget account, subject to appropriations, to fund SPR oil procurement. Facilities construction costs were left on-budget.

The current Administration nearly succeeded in meeting the 300,000 barrel per day requirement in fiscal year 1981 by achieving a fill rate of 292,000 barrels per day for the year. However, it is now evident that the SPR fill rate is limited by the availability of permanent storage capacity in the salt caverns. These caverns are being leached to create storage capacity, an unavoidably slow process.

As a result the DOE has for all practical purposes stopped seeking new contracts to purchase oil for the SPR. While oil is being delivered for deposit in the Reserve, nearly all of it is from existing contracts and it is sufficient to fill essentially all of the available permanent storage capacity. DOE testimony indicated that the rate of filling the SPR in fiscal year 1982 will be:

First Quarter: 338,000 barrels per day.
Second Quarter: 230,000 barrels per day.
Third and Fourth Quarter: 90,000 barrels per day.

The General Accounting Office examined the projections in their report entitled "Strategic Petroleum Reserve: Substantial Progress Made, But Capacity and Oil Quality Concerns Remain" (Dec. 31, 1981) for SPR capacity and fill rates and concluded that for the period between fiscal year 1982 and fiscal year 1989, the average fill rate would be only 189,000 barrels per day. The Administration's current request for recissions in fiscal year 1982 SPR facilities funding, which would slip the SPR completion date from 1989 to 1990, would appear to reduce that overall average fill rate to 168,000 barrels per day, little more than one half the fill rate set by the Congress.

In addition to the problem of reduced fill rate is the fact that the DOE does not have the available storage capacity to buy oil in quantity on the spot market when attractive prices are available.

Thus, when the spot price of OPEC crude on the world market was over $5 per barrel below the contract price, there was only a limited opportunity for DOE to take advantage of this relative bargain. In short they had no place to put the oil, if they purchased it.

In contrast to the lack of storage capacity in the SPR facilities, the private sector has an abundance of surplus storage capacity.

Private industry has offered the SPR office the following amounts of temporary storage capacity:

i. Coastal Corporation offered DOE a minimum of 20 million barrels of tanker storage (including security, crews, maintenance, etc.) for at least one year, to commence in 3 weeks. They are prepared to offer even more capacity for longer terms.

ii. One chemical firm has approximately 20 million barrels capacity in underground caverns which they discussed leasing to DOE.

iii. One major oil company offered to ship oil in slow moving tankers (VLCC's) which would serve as temporary storage enroute.

iv. Ted Eck, chief economist of Standard Oil of Indiana, estimates that there are 500 million barrels of storage capacity available on the world market and DOE could lease 300 million barrels if it so desired.

v. Information available to the Committee indicates that DOE's recent request for proposals for temporary storage capacity brought forth offers of 200 million barrels, half of that was in tankers. While this storage is technically short-term, surge capacity, DOE officials concede that the response is indicative of what's available for interim storage.

This storage capacity is available at a variety of rates. Tanker capacity is available at rates just above the scrap value of the tankers. Testimony revealed that the rates are as low as $1.00 per barrel per year, as compared to the normal commercial rates which DOE estimated at $2.40 to $2.80 per barrel per year.

If the DOE were to commence leasing or otherwise using excess private storage capacity in which to store oil for the SPR, it would enable the Department to take greater advantage of the current oil glut while at the same time building the SPR faster than under current plans. In testimony before the Committee William Vaughan, Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness agreed that the savings in oil costs achieved by buying the oil now rather than later might be enough to pay for the cost of leasing the interim storage facilities.

Indeed, the Congressional Budget Office estimate contained herein estimated that the savings from earlier SPR oil purchases would be sufficient to pay for the costs of leasing interim storage facilities. The analysis examined the case of accelerating the SPR fill rate to 300,000 barrels per day until 500 million barrels are in storage.

Under the Administration's current projections for SPR fill rates, the SPR will not contain 500 million barrels until fiscal year 1986. If the oil fill rate were accelerated to 300,000 barrels per day then the 500 million barrels would be achieved by fiscal year 1984, two years earlier. In its report to the Budget Committee for fiscal year 1983 (Publication No. 97-61) the Committee on Energy and Natural Resources recommended that fiscal year 1983 funding for the SPR should be continued at the appropriations level in fiscal year 1982 plus approximately $200 million additional funding for facilities construction, so as to accommodate a fill rate of 300,000 barrels per day.

If that fill rate were to be achieved it would require additional storage capacity which could be obtained through the use of interim storage.

## GENERAL ACCOUNTING OFFICE REVIEW OF DOE PROGRAMS

The General Accounting Office's review of the documents furnished by the DOE indicates that the Department is taking some concrete steps toward better-defined contingency plans. According to the GAO, in testimony before the Committee, most of DOE's emergency preparedness initiatives are very preliminary and the scope of DOE's effort in actual plan development—as distinct from doing studies and defining options—extends only to several narrow fronts. Basically, the DOE's approach rests on two fundamental foundations:

The Strategic Petroleum Reserve (SPR), and
The activation of the Executive Manpower Reserves.

The GAO concluded that of these two, the SPR is quite advanced while the use of the Executive Manpower Reserves for managing energy disruptions related to national defense emergencies has not reached the concrete proposal state. The GAO observed considerable confusion within the DOE and the Administration over whether authority exists to activate the Reserves in such a crisis and what they could accomplish once they were activated. The GAO observed that the rest of DOE's effort at this point, is directed at gathering data, doing studies and defining options, not the actual development of contingency plans.

The conclusion of the General Accounting Office was that "in the final analysis, it may well be that DOE's approach to contingency planning for everything except military situations is still little more than the SPR." Thus the GAO repeated its conclusion of last September that:

> The inadequate state of the Nation's emergency preparedness * * * is a serious problem requiring immediate attention. We believe the Federal Government should take prompt and concerted action to counter this serious potential threat to national security.

The GAO sees no reason to change that assessment today.

## IV. LEGISLATIVE HISTORY

### GENERAL

On April 1, 1982, Chairman James A. McClure introduced S. 2332, a bill to extend the expiration date of the antitrust defense in section 252 of the Energy Policy and Conservation Act to July 1, 1982. On May 6, 1982, a hearing was held on S. 2332 and three printed amendments to S. 2332:

Amendment No. 1352 (by Senator Durenberger) requires the President to prepare and send to the Congress (for Congressional review under existing law) a drawdown plan for the SPR.

Amendment No. 1353 (by Senator Durenberger) denies the availability of the IEA antitrust defense to oil companies participating in "subcrisis management" activities of the IEA.

Amendment No. 1354 (by Senator Jackson, for himself, and Senator Bradley) requires the President to submit to Congress (a) (a memorandum of law on the nature and extent of his energy contingency authorities, and (b) comprehensive contingency plans to carry out those authorities. It also requires the SPR to be filled at a minimum of 300,000 barrels per day until 500 million barrels are in storage and to amend existing law to facilitate the achievement of that fill rate through the leasing of interim private storage facilities. In addition, it requires the President to submit a report to Congress on various aspects of an oil supply disruption including likely prices of petroleum products, effects on the market of unpreempted state and local laws, and the potential for recycling revenues.

That hearing provided the Committee an opportunity to inquire into the status of our nation's energy emergency preparedness. In addition, the Committee examined the propriety of extending the IEA antitrust defense in section 252 of EPCA beyond June 1, 1982. The Committee also reviewed the United States' obligations under the International Energy Program, including the December 10, 1981 decision of the Governing Board of the International Energy Agency.

The Committee considered S. 2332 and the amendments related thereto in open business session on May 5, 11, 12, and 13, 1982. The

Committee on May 13, 1982, ordered the bill, as amended, to be reported favorably.

## V. COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on May 13, 1982, by a voice vote of a quorum present recommends that the Senate pass S. 2332, as amended.

During the Committee's consideration of the bill, voice and rollcall votes were taken on amendments offered to the bill. These votes were taken in open business session, have been announced publicly by the Committee, and are included in the minutes of each session in accordance with the requirements of section 133(b) of the Legislative Reorganization Act of 1946, as amended.

## VI. COMMITTEE AMENDMENTS

The Committee adopted amendments by Senators McClure, Jackson, Bradley, Matsunaga, Wallop and Durenberger, because of its concern over the lack of progress made to date in our Nation's energy emergency preparedness planning, and its desire to insure that we are prepared. The Committee undertook this action after a comprehensive review of that planning effort, and after concluding that the planning effort is at a very early stage. Much additional work needs to be done before we can conclude that the Nation is, in fact, prepared for an energy supply emergency.

The Committee has focused on several specific areas of concern. Those areas are addressed in the amendments adopted by the Committee, which are described below.

The Committee adopted an amendment to S. 2332 in the nature of a substitute. As introduced by Senators Jackson and Bradley (Amendment No. 1354), the amendment required the President to submit to Congress reports containing comprehensive contingency plans for dealing with a petroleum supply shortage, a description of the President's authority for implementing such plans, and an analysis of the various impacts of an oil supply disruption. That amendment also required that the Strategic Petroleum Reserve (SPR) be filled at an average annual rate of at least 300,000 barrels per day until the SPR reaches a level of at least 500 million barrels.

The Committee adopted an amendment, offered by Senator Matsunaga, to substitute the use of the term "petroluem Product" for the term "crude oil." The term "petroleum product" is fined in EPCA, and includes various refined petroleum products, as well as crude oil.

Prior to adoption of Amendment No. 1354, the Committee considered and approved a perfecting amendment by Chairman McClure. The perfecting amendment added more detailed reporting requirements, and it requires the preparation and submission of a "comprehensive energy emergency response procedure" by December 31, 1982. The amendment also incorporated Amendment No. 1352 offered by Senator Durenberger which requires the President to prepare, and submit to the Congress for review, a new SPR drawdown plan.

Chairman McClure's amendment did not alter the mandatory SPR fill rate of 300,000 barrels per day up to 500 million barrels in storage in the Jackson amendment, but it preserved the requirement of the Omnibus Reconciliation Act of 1981 that the President "shall seek" to continue the 300,000 barrels per day fill rate until the SPR reaches a level of 750 million barrels. Maintaining an average annual fill rate of 300,000 barrels per day will require use of interim storage facilities beginning in 1982. The Committee has received testimony indicating that the cost of such interim storage facilities will be offset by the savings resulting from purchasing cheaper oil in the short term rather than more expensive oil purchased after below-ground permanent capacity has been enlarged. The Committee anticipates that the types of facilities that could be used for interim storage include existing or newly-constructed steel tanks situated above-ground, underground facilities, and oil tankers.

The Committee anticipates that DOE will conduct a thorough economic analysis of these interim storage options and will select those facilities that are the most economically viable.

As initially offered, Chairman McClure's Amendment contained a requirement that the "comprehensive energy emergency response procedure" to be submitted to the Congress by the President shall, among other things, "specify a procedure, including the criteria that will be utilized, for determining appropriate governmental actions in response to international and domestic shortages." The Committee agreed to strike the phrase "including the criteria that will be utilized." The reason for this change was the Committee's concern that including the term "criteria" in the emergency response procedure could be construed as a requirement that the response procedure describe the actual policies and substantive decisions that would be employed in any of a variety of shortage conditions. The Committee agreed that the response procedure should identify the response options or policies that the Administration would consider using, and should include, if not the precise criteria for decision-making, then at least descriptions of how decisions will be made, who will make them, and the general policy considerations that will be taken into account in selecting a particular procedure or course of action rather than other available alternatives.

The Committee did not act on a second amendment offered by Senator Durenberger (Amendment No. 1353). That amendment would prohibit the use of the antitrust defense provisions of Section 252 of EPCA for oil company activities pursuant to the December 10, 1981, "subcrisis" management agreement described above. The Committee took no action on the amendment, pending receipt of additional information from the Administration requested during the May 6, 1982, hearing.

## VII. Section-By-Section Analysis

### SECTION 1—EXTENSION OF CERTAIN INTERNATIONAL ENERGY PROGRAM AUTHORITIES

This section would amend section 252(j) of the Energy Policy and Conservation Act (42 U.S.C. 6272(j)) to extend the expiration date for the antitrust defense contained therein until August 1, 1983.

## SECTION 2—ENERGY EMERGENCY PREPAREDNESS

This section would amend Title II of the Energy Policy and Conservation Act (EPCA), relating to Standby Energy Authorities, by adding at the end thereof a new part regarding Energy Emergency Preparedness.

### *Energy emergency preparedness (Part C)*

#### *Congressional findings, policy, and purposes (Sec. 271)*

*Findings.*—Section 271(a) of EPCA contains the statement of findings that: (1) a shortage of petroleum products caused by reductions in imports of petroleum products may occur at any time; (2) such a shortage may be sufficiently large to cause severe economic dislocations and hardships, or constitute a serious threat to public health, safety, and welfare; and (3) in the event of such a shortage, reliance on free market allocation and pricing of available petroleum product supplies may not be adequate to mitigate the adverse impacts of the shortage.

*Policy.*—Section 271(b) of EPCA would establish as national policy that a Federal comprehensive energy emergency response procedure shall be available for implementation by the President, pursuant to his authorities under existing law other than this part of EPCA, as a supplement to reliance on the free market to mitigate the adverse impacts of a shortage of petroleum products on public health, safety, and welfare.

*Purpose.*—Section 271(c) of EPCA would set forth the purpose of this Part. The purpose is to provide for the preparation of a comprehensive energy emergency response procedure under the authorities available for use by the President under authorities contained in existing law other than this Part.

#### *Status report (Sec. 272)*

Section 272(a) of EPCA requires the President by November 15, 1982, to submit to the Congress a memorandum of law, describing the nature and extent of the authorities under existing law available to the President for his use in responding to a substantial reduction in the amount of petroleum available to the United States. The memorandum of law must be reviewed and approved by the Attorney General prior to its submission to the Congress (Sec. 272(a)(2)).

In addition, the President must submit to the Congress a report on the status and schedules for completion of a comprehensive energy emergency response procedure by which the President would implement the authorities described in the memorandum of law.

The memorandum of law and the accompanying report submitted to the Congress (pursuant to subsection (a)) must, at a minimum, address several of the subject areas or programs currently being developed by the Department of Energy. (A more comprehensive discussion of DOE energy emergency program activities is set forth in the Appendix.)

*International Energy Program (sec. 272(b)(1)(A)).*—Specifically included in the bill are activities of the United States in support of the International Energy Program and the December 10, 1981, Inter-

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national Energy Agency agreement entitled "Decision on Preparation for Future Supply Disruptions," including, but not limited to, the National Emergency Sharing Organization, emergency sharing systems, and the supply right project. Also included in the bill are the activities of the United States pursuant to its energy emergency preparedness obligations to the North Atlantic Treaty Organization.

As a result of issues being raised by the Durenberger amendment described elsewhere. The Committee has examined the legal basis for U.S. participation in IEA subcrisis activities pursuant to the December 10, 1981, decision of the IEA Governing Board. In responding to Committee questions, the Department of Energy has stated that U.S. oil companies have no authority under section 251 of EPCA to participate in sub-trigger activities. Moreover, in testimony before the Committee, the Justice Department noted that both industry and the U.S. Government have concluded that the antitrust defense contained in section 252 of EPCA does not extend to any actions that might be taken by U.S. oil companies in response to a subcrisis shortage. Thus, subsection 272(b) requires an analysis of a number of legal and factual issues pertaining to the December 10, 1981, decision, including the following: (a) identification of the existing statutory authority that would permit participation by the U.S. Government and U.S. oil companies in IEA subcrisis activities; (b) a description of any statutory limitations on the extent of such authorized participation; (c) an assessment of the antitrust risks that would accompany subcrisis activities by U.S. oil companies; (d) a listing of those United States laws that would govern, under the terms of the December 10, 1981 Decision, the implementation of a subcrisis response program agreed upon by the IEA Governing Board; and (e) an analysis of how those laws would affect such implementation.

*Strategic Petroleum Reserve (Sec. 272(b)(1)(C)).*—The memorandum of law and the report must also address the development and use of the Strategic Petroleum Reserve. The comprehensive energy emergency response procedure must address in advance when the President proposes to use the Strategic Petroleum Reserve, and how he would distribute the oil in a drawdown. The response procedure must also address under what circumstances the President proposes to use the Reserve and define effective distribution methods and drawdown rates.

*Private stockpiles (sec. 272(b)(1)(D)).*—On the domestic front the memorandum of law must address Government incentives to encourage private petroleum product stocks. The use of private stocks can serve as a major defense against the adverse economic consequences of an energy supply shortage. As Assistant Secretary Hormats testified:

> We must not allow short-term market developments to lull us into a false sense of security about supplies. We are becoming concerned that oil companies may be drawing their oil stocks down too far. The better case scenarios may look more realistic to us today than the worse case ones. but we cannot neglect the latter in our emergency preparedness planning. It takes a long time to construct and fill a strategic petroleum reserve.

Unfortunately, as was observed by several witnesses, private stocks are now 110 million barrels lower than last March. If this trend continues, and the factors underlying it show no sign of abating, by September private stocks will be at levels similar to those during the Iranian shortfall of 1979. As the GAO observed "while the private stocks have fallen by 100 million barrels between last November and April, the SPR added only about 20 million barrels during the same period."

When asked what incentives now exist to encourage private petroleum stockpiles the Department of Energy responded that:

> This question is currently the subject of a DOE contractor study, due to be completed August 31, 1982. Of course, the main incentive is the assurance of no Federal price or allocation controls, which resulted from the veto of S. 1503. Another incentive is the knowledge that the Federal Government is going to refrain from interfering with the operation of the energy marketplace. Thus, users and others know that it will be their responsibility to maintain adequate stocks of fuel to meet their own needs.

The DOE added:

> The question of whether there is a problem with respect to the current level of private stocks of petroleum is the subject of a contractor study scheduled to be completed August 31, 1982.
>
> There is no existing statutory authority to control privately owned stocks. Of course, the principal protection of law resides in the U.S. Constitutional prohibitions against the taking of property without due process of law and adequate compensation.

Because private stocks are so important to our energy emergency preparedness the DOE effort needs to focus on (1) short term means to slow or stop the current drawdown of private stocks; (2) long term policies to encourage private stock building; and (3) policies to encourage appropriate drawdown of industry stocks during disruptions.

*Executive Manpower Reserves (sec. 272(b)(1)(E)):* Another subject to be included in the memorandum of law and accompanying report is use of the Executive Manpower Reserves in the event of a petroleum product shortage. A major feature of the Administration's program appears to be reactivation of the Reserves; therefore, section 272(b)(1)(D) requires examination of the proposed use of the Emergency Electric Power Reserve, the Emergency Petroleum and Gas Reserve, and the Emergency Solid Fuels Reserve. The objective of the Reserves is that private industry expertise be utilized in the national interest during energy emergencies. However, there appear to be a number of potential impediments to effective use of the reserves. If reliance on the Executive Manpower Reserves is to be a centerpiece of our nation's emergency preparedness program, the issues raised by use of the Reserves must be fully analyzed.

According to GAO, there are four basic issues that have to be resolved. First, can the Reserves be activated in an energy crisis which was not declared to be a national emergency under the Defense Production Act? The Federal Emergency Management Agency, which has overall responsibility for Executive Manpower Reserves governmentwide, has taken the view that the Reserves can only be mobilized in a defense-related national emergency. If this view prevails, DOE would not be able to activate the Reserves for the most likely kinds of energy emergencies.

Second, is there a problem of conflict of interest? Federal conflict of interest laws and regulations may effectively prohibit inclusion in the Reserves of those individuals best qualified to provide the necessary expertise, namely, employees of energy-related companies. If such employees are not effectively prohibited from serving in the Reserves, a question arises as to what extent their value as reservists would be reduced by the requirement that they not deal with particular matters affecting the financial interests of their own companies.

Third, is there a problem regarding antitrust policy? To what extent would the use of corporate employees in the Reserves subject such employees and their companies to the threat of prosecution under the antitrust laws?

Fourth, there is the overall question of what the Reserves would actually do if the previous three problems were solved and the Reserves were mobilized. A related question is whether new legislation is needed to ensure that the Executive Manpower Reserves could be used effectively if they were mobilized.

*State and Local Government (sec. 272(b)(1)(F)).*—The memorandum of law and the report must also address energy emergency response management in coordination with State and local governments, and emergency public information activities. The Committee is concerned about the fact that under existing federal law, there is no federal preemption of those State and local laws that could seriously inhibit operation of market allocation and pricing, and that could interfere with federal energy emergency responses, in the event of an energy shortage. Moreover, DOE has informed the Committee that it is encouraging development of State contingency plans. However, this invites creation of more than 50 plans and regulations which may conflict with each other and with national plans and regulations. When asked by the Committee to explain why a web of potentially conflicting regulations will not be created, DOE responded as follows:

> We anticipate that the States will recognize that putting in place mechanisms that did not work at the Federal level, would not work at State and local levels either.

DOE also told the Committee:

> In view of the fact that government intervention has proven in the past to create or exacerbate crises in the energy field, we certainly expect that the States would respect the lessons of history, and act accordingly.

Since DOE did not provide any analysis in support of this statement, the Committee intends that the report required by subsection (b) will provide a more thorough discussion of the basis for DOE's confidence in the willingness of individual States to refrain from exercising emergency powers, and from enacting and implementing petroleum product allocation and pricing laws.

When asked what the Department of Energy was doing to avoid a web of potentially conflicting State regulation, the Department responded that:

> Since we want to help States develop consistent approaches, another part of our strategy is to coordinate with States through providing reliable and timely public information.
>
> Because the Administration also believes in Federalism, we do not intend to intrude in State decisions concerning State and local problems. If, however, State actions impede interstate commerce, the Department will work with the Department of Justice to prevent or remove such restrictions.

Therefore, the Committee anticipates that the memorandum of law will describe how intrusive State laws must be before they will be challenged by the Justice Department on grounds of impeding interstate commerce. Conversely, another important issue is the extent to which the States should be permitted to exercise broad discretion in determining how to respond to any energy shortage.

Section 272(b)(2) requires that the memorandum of law and the report distinguish among three categories of petroleum shortages:

> Situations involving limited or general war, international tensions that threaten national security, and other Presidentially declared emergencies;
>
> Events resulting in activation of the International Energy Program; and
>
> Events or situations less severe in nature than the aforementioned.

### *Comprehensive energy emergency response procedure (Sec. 273).*

Section 273 (a) of EPCA authorizes and directs the President to submit to the Congress no later than December 31, 1982, a comprehensive eenrgy emergency response procedure which the President pursuant to his authorities under otherwise existing law would implement, in while or in part, in responding to a substantial reduction in the amount of petroleum products available to the United States.

The comprehensive energy emergency response procedure must (1) specify a procedure for determining appropriate governmental actions in response to international and domestic energy shortages; (2) describe alternative actions available for implementation by the President; and (3) recommend any additional statutory authority necessary for the President to carry out the purposes of this Part (Section 273(b)).

Section 273 (c) of EPCA provides that nothing in this Part, or in the comprehensive energy emergency response procedure submitted pursuant to subsection 273 (b), shall limit the authority of the President under otherwise existing law to respond to a reduction in the amount of petroleum products available to the United States.

### SECTION 3—STRATEGIC PETROLEUM RESERVE DRAWDOWN PLAN

Section 3 would require the President to prepare a new drawdown plan for the strategic petroleum reserve consistent with the provisions of the Energy Policy and Conservation Act. The President is required to transmit a drawdown plan for SPR to the Congress by September 30 of this year. Such a plan would be subject to the Congressional review procedures described in EPCA. The existing drawdown plan previously approved by the Congress shall remain effective until a new drawdown plan is approved pursuant to section 150 of EPCA.

### SECTION 4—STRATEGIC PETROLEUM RESERVE AMENDMENTS

Section 4 would amend section 160(c) of the Energy Policy and Conservation Act (42 U.S.C. 6240(c)) by adding the following new subsections:

Subsection 160(c)(1) of EPCA requires the President "to fill" the SPR at 300,000 barrels per day beginning July 1, 1982, and to maintain this rate until 500 million barrels are in storage. Subsection (c)(2) preserves the current law requirement that the President "seek to fill" the SPR at 300,000 barrels per day until 750 million barrels are in storage.

Subsection 160(e) of EPCA provides that not to exceed 10 percent of the funds obligated from the "off-budget" SPR Petroleum Account may be used to meet expenses associated with interim storage facilities for the SPR.

Subsection 160(f) of EPCA provides that no amendment to the SPR Plan is required for the Administration to commence interim storage (Sec. 4 (b)).

Subsection 160(g) of EPCA provides that interim storage in existing SPR facilities does not require an Environmental Impact Statement.

Subsection 160(h) of EPCA provides that petroleum stored in interm storage facilities is a part of the SPR and thus, for example, could be included in an SPR drawdown.

### SECTION 5—IMPACT STUDY

Section 5 requires the President to submit a report analyzing the impact on the domestic economy and on consumers of reliance on market allocation and pricing during a severe petroleum supply shortage. The President must include in his report the likely impact of State and local allocation and pricing laws on the distribution of petroleum in a disruption and projections of certain petroleum prices and a detailed description of the likely monetary and fiscal policies that would be followed during a disruption.

### SECTION 6—CONTINUATION OF PETROLEUM PRODUCT INFORMATION

Section 6(a) amends Part A of title V of the Energy Policy and Conservation Act (42 U.S.C. 6381 et seq.) by adding at the end thereof a new section 507 regarding petroleum product information. The section requires the President, or his delegate, to collect under existing law information on the pricing, supply, and distribution of petroleum products at the wholesale and retail levels, on a State-by-State basis.

## VIII. COST AND BUDGETARY CONSIDERATIONS

The Commitee does not anticipate any additional budgetary impact upon enactment from the energy emergency preparedness activities described in the bill. As previously discussed in the "Background and Need" section of this report and in the "Appendix" such activities are already being undertaken or are planned by the Department of Energy, and are included in the DOE budget.

In the case of the Strategic Petroleum Reserve (SPR), the Committee's requirement that the President accelerate the fill rate so as to assure a minimum annual average fill rate of 300,000 barrels per day until 500 million barrels are in storage would result in *no* additional program expenditures through 1986. Rather, the bill would shift expenditures now anticipated in 1985 and 1986 into earlier years until 500 million barrels of oil are stored in the Reserve. This shift is being undertaken in recognition of the fact that the Reserve is a principal element of the United States' energy emergency program. This accelerated storage rate will provide the United States with additional protection from the economic effects of a severe petroleum supply disruption. In addition to the resultant energy security benefits, the evidence presented to the Committee indicates that cost savings can be achieved by the purchase of oil on the international market at this time when prices are deflated.

The Congressional Budget Office cost estimate of this measure follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, D.C., May 13, 1982.*

Hon. JAMES A. MCCLURE,
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2332, a bill to amend the Energy and Policy Conservation Act to extend certain authorities relating to international energy programs and for other purposes.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

### CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 2332.
2. Bill title: A bill to amend the Energy Policy and Conservation Act to extend certain authorities relating to international energy energy programs and for other purposes.
3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, May 13, 1982.

4. Bill purpose: The bill extends until August 1, 1983, section 252 of the Energy Policy and Conservation Act, which provides antitrust immunity to oil companies participating in international energy programs. In addition, section 2 of the bill requires the President to submit a report by September 2, 1982, describing the nature and extent of authorities available to the President and plans by which this authority would be implemented to address a substantial reduction in the amount of petroleum products available to the United States, and to prepare a comprehensive energy contingency plan by December 1, 1982. The General Accounting Office is also required to report quarterly on activities related to contingency planning. Section 3 requires a drawdown report for the SPR to be submitted by September 1982. Section 5 of this bill requires a study on the impact on the economy and consumers of reliance on market allocation and pricing during a severe oil supply shortage. The bill also directs the federal government to collect certain information on the pricing, supply, and distribution of petroleum products on a state-by state basis in section 6.

Section 4 amends the Energy Policy and Conservation Act relating to the Strategic Petroleum Reserve (SPR) to allow interim storage of oil to assure an average annual fill rate of a minimum of 300,000 barrels per day. The required fill rate would apply until the SPR contains 500 million barrels. The bill authorizes the use of funds in the SPR account for oil acquisition to finance interim storage. Interim storage is authorized beginning July 1, 1982.

5. Cost estimate: The estimated direct impact of section 4 is off-budget and is summarized in the following table.

[By fiscal years, in billions of dollars]

| | 1982 | 1983 | 1984 | 1985 | 1985 | 1987 |
|---|---|---|---|---|---|---|
| Estimated authorization level | +0.1 | +1.5 | +1.4 | −2.9 | −0.1 | ---------- |
| Estimated outlays | | +1.0 | +2.1 | −1.0 | −2.1 | ---------- |

While the bill would result in earlier availability of a 500 million barrel SPR, with no net increase in SPR outlays by 1987, the shifting of spending from 1985 and 1986 to 1983 and 1984 would result in additional on-budget expenditures for interest on the public debt of at least $850 million between 1983 and 1987. While such interest costs are not routinely included in CBO cost estimates, they are a significant consideration in assessing the impact of a change in the timing of government expenditures—and, in this case, they represent the major net budget impact of the bill.

The reporting and other requirements of the bill will result in no significant additional cost to the government.

6. Basis of estimate: For this estimate, it was assumed that the bill would become effective on July 1, 1982.

CBO estimates that the requirements of sections 1, 2, 3, and 5 will cost approximately $0.6 million in 1983 and $0.1 million thereafter, based on information provided by various federal agencies.

CBO assumes that by January 1983 oil can be placed in oil tankers for interim storage. Estimates for leasing tanker storage range from

$1.00 per barrel a year to $3.78 per barrel. The actual cost will vary depending on staffing, operations, status, and security requirements set forth in the contract. The lower estimates assume foreign crews on foreign flag vessels and represent industry estimates based on the current market conditions. Estimates around $3.00 to $3.50 per barrel reflect the estimated costs of providing tanker storage on American vessels.

Assuming some U.S. vessels, more stringent requirements for government storage than for regular commercial operations, and other costs associated with interim storage operations, CBO believes that this estimate would be sufficient to cover any mix of tanker or onshore and transportation costs to the government.

In estimating the demand for interim storage, CBO assumed a fill rate and development of permanent capacity at levels projected in the President's February 1983 budget proposal. The estimated costs represent the additional budget authority and outlays required to maintain a 300,000 barrels per day fill rate through the first 500 million barrels, and then revert to the Administration's planned inventory levels thereafter. CBO estimates that a maximum of 70 million barrels will need to be stored in tankers between 1983 and 1985, and that no interim storage will be required beyond 1986.

INTERIM STORAGE REQUIREMENT

[End of the year capacity, in millions of barrels]

| | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|---|---|
| Inventory of current fill rate | 267 | 343 | 400 | 456 | 538 | 597 |
| Current estimated capacity | 267 | 343 | 417 | 456 | 538 | 597 |
| Bill requirement | 267 | 376 | 487 | 500 | 538 | 597 |
| Interim storage required | | 33 | 70 | 44 | | |

The estimated cost of interim storage is approximately $0.4 billion, as shown below.

COSTS OF INTERIM STORAGE

[By fiscal years, in billions of dollars]

| | 1983 | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|---|
| Estimated authorization level | +0.1 | +0.3 | (1) | | |
| Estimated outlays | | +.2 | +.2 | (1) | |

[1] Less than $0.05 billion.

By increasing the fill rate of the SPR and assuming a moderate growth in oil prices, CBO estimates that outlays for oil acquisition will increase by approximately $1.0 billion in 1983 and $1.9 billion in 1984. The reduced fill rate thereafter would result in lower outlays, by $1.2 billion in 1985 and $2.1 billion in 1986. As a result, the net impact of this amendment on the cost of oil purchases through 1987 is a savings of $0.4 billion. This is a result of capitalizing on lower oil prices in the near term. The net savings from earlier oil purchase will increase if oil prices rise at a faster rate. The CBO oil price assumptions are summarized in the table below.

*Estimated oil prices for the SPR—including transportation and management adjustment*

[By fiscal years; in billions of dollars]

| Oil price per barrel: | |
|---|---|
| 1983 | 35.46 |
| 1984 | 37.84 |
| 1985 | 40.15 |
| 1986 | 42.84 |
| 1987 | 45.62 |

The net savings on earlier oil purchases are, however, offset by increased interest on the public debt, which would result from the faster spending on oil purchases. These interest costs are estimated to be at least $0.1 billion in 1983, $0.2 billion in 1984, $0.3 billion in 1985, $0.2 billion in 1986 and $0.1 billion in 1987.

7. Estimate comparison: On March 12, 1982, the General Accounting Office, in a letter to the House Committee on Energy and Commerce, estimated the costs of interim storage of oil to be between $0.5 and $1.0 billion. Their estimate was in 1982 dollars and assumed additional storage requirements beginning in 1982.

8. Previous CBO estimate: On March 30, 1982, CBO prepared an estimate for H.R. 5789, a bill to amend the Energy Policy and Conservation Act to extend certain authorities relating to the international energy program, as ordered reported by the House Committee on Energy and Commerce, March 30, 1982. H.R. 5789 is similar to section 1 of S. 2332 and was estimated to cost $0.3 million through July 1983.

CBO has prepared estimates for the Senate Committee on Energy and Natural Resources for S. 1503, the Standby Petroleum Allocation Act of 1981, as ordered reported on September 30, 1981. and for the House Committee on Energy and Commerce for H.R. 4700, the Standby Petroleum Emergency Act of 1981, as ordered reported on November 18, 1981. Both of these bills required reports similar to those in section 5 of S. 2332 and were estimated to cost less than $100,000 in 1983.

9. Estimate prepared by: Jeffrey W. Nitta.

10. Estimate approved by:

C. G. Nuckols
(For James L. Blum,
*Assistant Director for Budget Analysis*).

## IX. Regulatory Impact Evaluation

In compliance with paragraph 11(b) of the Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2332.

This measure does not require the promulgation of any regulation.

No personal information would be collected in administering any program under this bill. Therefore, there will be no impact on personal privacy from enactment of the bill.

## X. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1503 as ordered are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## ENERGY POLICY AND CONSERVATION ACT

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### Public Law 94–163, as Amended

**AN ACT To increase domestic energy supplies and availability; to restrain energy demand; to prepare for energy emergencies; and for other purposes**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Energy Policy and Conservation Act".

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# TITLE I—MATTERS RELATED TO DOMESTIC SUPPLY AVAILABILITY

## PART B [1]—STRATEGIC PETROLEUM RESERVE

### DECLARATION OF POLICY

SEC. 151. (a) The Congress finds that the storage of substantial quantities of petroleum products will diminish the vulnerability of the United States to the effects of a severe energy supply interruption, and provide limited protection from the short-term consequences of interruptions in supplies of petroleum products.

(b) It is hereby declared to be the policy of the United States to provide for the creation of a Strategic Petroleum Reserve for the storage of up to 1 billion barrels of petroleum products, but not less than 150 million barrels of petroleum products by the end of the 3-year period which begins on the date of enactment of this Act, for the purposes of reducing the impact of disruptions in supplies of petroleum products or to carry out obligations of the United States under the international energy program.

### DEFINITIONS

SEC. 152. As used in this part:

(1) The term "Early Storage Reserve" means that portion of the Strategic Petroleum Reserve which consists of petroleum products stored pursuant to section 155.

(2) The term "importer" means any person who owns, at the first place of storage, any petroleum product imported into the United States.

(3) The term "Industrial Petroleum Reserve" means that portion of the Strategic Petroleum Reserve which consists of petroleum products owned by importers or refiners and acquired, stored, or maintained pursuant to section 156.

(4) The term "interest in land" means any ownership or possessory right with respect to real property, including ownership in fee, an easement, a leasehold, and any subsurface or mineral rights.

(5) The term "readily available inventories" means stocks and supplies of petroleum products which can be distributed or used without affecting the ability of the importer or refiner to operate at normal capacity; such term does not include minimum working inventories or other unavailable stocks.

(6) The term "refiner" means any person who owns, operates, or controls the operation of any refinery.

(7) The term "Regional Petroleum Reserve" means that portion of the Strategic Petroleum Reserve which consists of petroleum products stored pursuant to section 157.

(8) The term "related facility" means any necessary appurtenance to a storage facility, including pipelines, roadways, reservoirs, and salt brine lines.

(9) The term "Reserve" means the Strategic Petroleum Reserve.

(10) The term "storage facility" means any facility or geological formation which is capable of storing significant quantities of petroleum products.

(11) The term "Strategic Petroleum Reserve" means petroleum products stored in storage facilities pursuant to this part; such term includes the Industrial Petroleum Reserve, the Early Storage Reserve, and the Regional Petroleum Reserve.

### STRATEGIC PETROLEUM RESERVE OFFICE

SEC. 153. There is established, in the Federal Energy Administration, a Strategic Petroleum Reserve Office. The Secretary, acting through such Office and in accordance with this part, shall exercise authority over the establishment, management, and maintenance of the Reserve.

### STRATEGIC PETROLEUM RESERVE

SEC. 154. (a) A Strategic Petroleum Reserve for the storage of up to 1 billion barrels of petroleum products shall be created pursuant to this part. By the end of the 3-year period which begins on the date of enactment of this Act, the Strategic Petroleum Reserve (or the Early Storage Reserve authorized by section 155, if no Strategic Petroleum Reserve Plan has become effective pursuant to the provisions of section 159(a)) shall contain not less than 150 million barrels of petroleum products.

(b) The Secretary, not later than December 15, 1976, shall prepare and transmit to the Congress, in accordance with section 551, a Strategic Petroleum Reserve Plan. Such Plan shall comply with the provisions of this section and shall detail the Secretary's proposals for designing, constructing, and filling the storage and related facilities of the Reserve.

(c)(1) To the maximum extent practicable and except to the extent that any change in the storage schedule is justified pursuant to subsection (e)(6), the Strategic Petroleum Reserve Plan shall provide that:

(A) within 7 years after the date of enactment of this Act, the volume of crude oil stored in the Reserve shall equal the total volume of crude oil which was imported into the United States during the base period specified in paragraph (2);

(B) within 18 months after the date of enactment of this Act, the volume of crude oil stored in the Reserve shall equal not less than 10 percent of the goal specified in subparagraph (A);

(C) within 3 years after the date of enactment of this Act, the volume of crude oil stored in the Reserve shall equal not less than 25 percent of the goal specified in subparagraph (A); and

(D) within 5 years after the date of enactment of this Act, the volume of crude oil stored in the Reserve shall equal not less than 65 percent of the goal specified in subparagraph (A).

Volumes of crude oil initially stored in the Early Storage Reserve and volumes of crude oil storage in the Industrial Petroleum Reserve, and the Regional Petroleum Reserve shall be credited toward attainment of the storage goals specified in this subsection.

(2) The base period shall be the period of the 3 consecutive months, during the 24-month period preceding the date of enactment of this Act, in which average monthly import levels were the highest.

(d) The Strategic Petroleum Reserve Plan shall be designed to assure, to the maximum extent practicable, that the Reserve will minimize the impact of any interruption or reduction in imports of refined petroleum products and residual fuel oil in any region which the Secretary determines is, or is likely to become, dependent upon such imports for a substantial portion of the total energy requirements of such region. The Strategic Petroleum Reserve Plan shall be designed to assure, to the maximum extent practicable, that each noncontiguous area of the United States which does not have overland access to domestic crude oil production has its component of the Strategic Petroleum Reserve within its respective territory.

(e) The Strategic Petroleum Reserve Plan shall include:

(1) a comprehensive environmental assessment;

(2) a description of the type and proposed location of each storage facility (other than storage facilities of the Industrial Petroleum Reserve) proposed to be included in the Reserve;

(3) a statement as to the proximity of each such storage facility to related facilities;

(4) an estimate of the volumes and types of petroleum products proposed to be stored in each such storage facility;

(5) a projection as to the aggregate size of the Reserve, including a statement as to the most economically-efficient storage levels for each such storage facility;

(6) a justification for any changes, with respect to volumes or dates, proposed in the storage schedule specified in subsection (c), and a program schedule for overall development and completion of the Reserve (taking into account all relevant factors,

including cost effectiveness, the need to construct related facilities, and the ability to obtain sufficient quantities of petroleum products to fill the storage facilities to the proposed storage levels);

(7) an estimate of the direct cost of the Reserve, including—

(A) the cost of storage facilities;

(B) the cost of the petroleum products to be stored;

(C) the cost of related facilities; and

(D) management and operations costs;

(8) an evaluation of the impact of developing the Reserve taking into account—

(A) the availability and the price of supplies and equipment and the effect, if any, upon domestic production of acquiring such supplies and equipment for the Reserve;

(B) any fluctuations in world, and domestic, market prices for petroleum products which may result from the acquisition of substantial quantities of petroleum products for the Reserve;

(C) the extent to which such acquisition may support otherwise declining market prices for such products; and

(D) the extent to which such acquisition will affect competition in the petroleum industry;

(9) an identification of the ownership of each storage and related facility proposed to be included in the Reserve (other than storage and related facilities of the Industrial Petroleum Reserve);

(10) an identification of the ownership of the petroleum products to be stored in the Reserve in any case where such products are not owned by the United States;

(11) a statement of the manner in which the provisions of this part relating to the establishment of the Individual Petroleum Reserve and the Regional Petroleum Reserve will be implemented; and

(12) a Distribution Plan setting forth the method of drawdown and distribution of the Reserve.

### EARLY STORAGE RESERVE

SEC. 155. (a)(1) The Secretary shall establish an Early Storage Reserve as part of the Strategic Petroleum Reserve. The Early Storage Reserve shall be designed to store petroleum products, to the maximum extent practicable, in existing storage capacity. Petroleum products stored in the Early Storage Reserve may be owned by the United States or may be owned by others and stored pursuant to section 156(b).

(2) If the Strategic Petroleum Reserve Plan has not become effective under section 159(a), the Early Storage Reserve shall contain not less than 150 mililon barrels of petroleum products by the end of the 3-year period which begins on the date of enactment of this Act.

(b) The Early Storage Reserve shall provide for meeting regional needs for residual fuel oil and refined petroleum products in any region which the Secretary determines is, or is likely to become, dependent upon imports of such oil or products for a substantial portion of the total energy requirements of such region.

(c) Within 90 days after the date of enactment of this Act, the Secretary shall prepare and tranismit to the Congress an Early Storage Reserve Plan which shall provide for the storage of not less than 150 million barrels of petroleum products by the end of 3 years from the date of enactment of this Act. Such plan shall detail the Secretary's proposals for implementing the Early Storage Reserve requirements of this section. The Early Storage Reserve Plan shall, to the maximum extent practicable, provide for, and set forth the manner in which, Early Storage Reserve facilities will be incorporated into the Strategic Petroleum Reserve after the Strategic Petroleum Reserve Plan has become effective under section 159(a). The Early Storage Reserve Plan shall include, with respect to the Early Storage Reserve, the same or similar assessments, statements, estimates, evaluations, projections, and other information which section 154(e) requires to be included in the Strategic Petroleum Reserve Plan, including a Distribution Plan for the Early Storage Reserve.

### INDUSTRIAL PETROLEUM RESERVE

SEC. 156. (a) The Secretary may establish an Industrial Petroleum Reserve as part of the Strategic Petroleum Reserve.

(b) To implement the Early Storage Reserve Plan or the Strategic Petroleum Reserve Plan which has taken effect pursuant to section 159(a), the Secretary may require each importer of petroleum products and each refiner to (1) acquire, and (2) store and maintain in readily available inventories, petroleum products in amounts determined by the Secretary, except that the Secretary may not require any such importer or refiner to store such petroleum products in an amount greater than 3 percent of the amount imported or refined by such person, as the case may be, during the previous calendar year. Petroleum products imported and stored in the Industrial Petroleum Reserve shall be exempt from any tariff or import license fee.

(c) The Secretary shall implement this section in a manner which is appropriate to the maintenance of an economically sound and competitive petroleum industry. The Secretary shall take such steps as are necessary to avoid inequitable economic impacts on refiners and importers, and he may grant relief to any refiner or importer who would otherwise incur special hardship, inequity, or unfair distribution of burdens as the result of any rule, regulation, or order promulgated under this section. Such relief may include full or partial exemption from any such rule, regulation, or order and the issuance of an order permitting such an importer or refiner to store petroleum products owned by such importer or refiner in surplus storage capacity owned by the United States.

### REGIONAL PETROLEUM RESERVE

SEC. 157. (a) The Strategic Petroleum Reserve Plan shall provide for the establishment and maintenance of a Regional Petroleum Reserve in, or readily accessible to, each Federal Energy Administration Region, as defined in title 10, Code of Federal Regulations in effect on November 1, 1975, in which imports of residual fuel oil or any refined petroleum product, during the 24-month period preceding the date of computation, equal more than 20 percent of demand for such oil or product in such regions during such period, as determined by the Secretary. Such volume shall be computed annually.

(b) To implement the Strategic Petroleum Reserve Plan, the Secretary shall accumulate and maintain in or near any such Federal Energy Administration Region described in subsection (a), a Regional Petroleum Reserve containing volumes of such oil or product, described in subsection (a), at a level adequate to provide substantial protection against an interruption or reduction in imports of such oil or product to such region, except that the level of any such Regional Petroleum Reserve shall not exceed the aggregate volume of imports of such oil or product into such region during the period of the 3 consecutive months, during the 24-month period specified in subsection (a), in which average monthly import levels were the highest, as determined by the Secretary. Such volume shall be computed annually.

(c) The Secretary may place in storage crude oil, residual fuel oil, or any refined petroleum product in substitution for all or part of the volume of residual fuel oil or any refined petroleum product stored in any Regional Petroleum Reserve pursuant to the provisions of this section if he finds that such substitution (1) is necessary or desirable for purposes of economy, efficiency, or for other reasons, and (2) may be made without delaying or otherwise adversely affecting the fulfillment of the purpose of the Regional Petroleum Reserve.

### OTHER STORAGE RESERVES

SEC. 158. Within 6 months after the Strategic Petroleum Reserve Plan is transmitted to the Congress, pursuant to the requirements of section 154(b), the Secretary shall prepare and transmit to the Congress a report setting forth his recommendations concerning the necessity for, and feasibility of, establishing—

(1) Utility Reserves containing coal, residual fuel oil, and refined petroleum products, to be established and maintained by major fossil-fuel-fired baseload electric power generating stations;

(2) Coal Reserves to consist of (A) federally-owned coal which is mined by or for the United States from Federal lands, and (B) Federal lands from which coal could be produced with minimum delay; and

(3) Remote Crude Oil and Natural Gas Reserves consisting of crude oil and natural gas to be acquired and stored by the United States, in place pursuant to a contract or other agreement or arrangement entered into between the United States and persons who discovered such oil or gas in remote areas.

### REVIEW BY CONGRESS AND IMPLEMENTATION

SEC. 156. (a) The Strategic Petroleum Reserve Plan shall not become effective and may not be implemented, unless—

(1) the Secretary has transmitted such Plan to the Congress pursuant to section 154(b); and

(2) neither House of Congress has disapproved (or both Houses have approved) such Plan, in accordance with the procedures specified in section 551.

(b) For purposes of congressional review of the Strategic Petroleum Reserve Plan under subsection (a), the 5 calendar days described in section 551(f)(4)(A) shall be lengthened to 15 calendar days, and the 15 calendar days described in section 551 (c) and (d) shall be lengthened to 45 calendar days.

(c) The Secretary may, prior to transmittal of the Strategic Petroleum Plan, prepare and transmit to the Congress proposals for designing, constructing, and filling storage or related facilities. Any such proposal shall be accompanied by a statement explaining (1) the need for action on such proposals prior to completion of such Plan, (2) the anticipated role of the proposed storage or related facilities in such Plan, and (3) to the maximum extent practicable, the same or similar assessments, statements, estimates, evaluations, projections, and other information which section 154(e) requires to be included in the Strategic Petroleum Reserve Plan.

(d) The Secretary may prepare amendments to the Strategic Petroleum Reserve Plan or to the Early Storage Reserve Plan. He shall transmit any such amendment to the Congress together with a statement explaining the need for such amendment and, to the maximum extent practicable, the same or similar assessments, statements, estimates, evaluations, projections, and other information which section 154(e) requires to be included in the Strategic Petroleum Reserve Plan.

(e) Any proposal transmitted under subsection (c) and any amendment transmitted under subsection (d), other than a technical or clerical amendment or an amendment to the Early Storage Reserve Plan, shall not become effective and may not be implemented unless—

(1) the Secretary has transmitted such proposal or amendment to the Congress in accordance with subsection (c)) or (d) (as the case may be), and

(2) neither House of Congress has disapproved (or both House of Congress have approved) such proposal or amendment,, in accordance with the procedures specified in section 551.

(f) To the extent necessary or appropriate to implement—

(1) the Strategic Petroleum Reserve Plan which has taken effect pursuant to subsection (a);

(2) the Early Storage Reserve Plan;

(3) any proposal described in subsection (c), or any amendment described in subsection (d), which such proposal or amendment has taken effect pursuant to subsection (e); **[and]**

(4) any technical or clerical amendment or any amendment to the Early Storage Reserve Plan, **[,]***;*

*(5) the storage of petroleum products in interim storage facilities,*

the Secretary may:

(A) promulgate rules, regulations, or orders;

(B) acquire by purchase, condemnation, or otherwise, land or interests in land for the location of storage and related facilities;

(C) construct, purchase, lease, or otherwise acquire storage and related facilities;

(D) use, lease, maintain, sell, or otherwise dispose of storage and related facilities acquired pursuant to this part;

(E) acquire, subject to the provisions of section 160, by purchase, exchange, or otherwise, petroleum products for storage in the Strategic Petroleum Reserve, including the Early Storage Reserve and the Regional Petroleum Reserve;

(F) store petroleum products in storage facilities owned and controlled by the United States or in storage facilities owned by others if such facilities are subject to audit by the United States;

(G) execute any contracts necessary to carry out the provisions of such Strategic Petroleum Reserve Plan, Early Storage Reserve Plan, proposal or amendment;

(H) require any importer of petroleum products or any refiner to (A) acquire, and (B) store and maintain in readily available inventories, petroleum products in the Industrial Petroleum Reserve, pursuant to section 156;

(I) require the storage of petroleum products in the Industrial Petroleum Reserve, pursuant to section 156, on such reasonable terms as the Secretary may specify in storage facilities owned and controlled by the United States or in storage facilities other than those owned by the United States if such facilities are subject to audit by the United States;

(J) require the maintenance of the Industrial Petroleum Reserve;

(K) maintain the Reserve; and

(L) bring an action, whenever he deems it necessary to implement the Strategic Petroleum Reserve Plan, in any court having jurisdiction of such proceedings, to acquire by condemnation any real or personal property, including facilities, temporary use of facilities, or other interests in land, together with any personal property located thereon or used therewith.

(g) Before any condemnation proceedings are instituted, an effort shall be made to acquire the property involved by negotiation, unless, the effort to acquire such property by negotiation would, in the judgment of the Secretary be futile or so time-consuming as to unreasonably delay the implementation of the Strategic Petroleum Reserve Plan, because of (1) reasonable doubt as to the identity of the owners, (2) the large number of persons with whom it would be necessary to negotiate, or (3) other reasons.

### PETROLEUM PRODUCTS FOR STORAGE IN THE RESERVE

SEC. 160. (a) The Secretary is authorized, for purposes of implementing the Strategic Petroleum Reserve Plan or the Early Storage Reserve Plan, to place in storage, transport, or exchange—

(1) crude oil produced from Federal lands, including crude oil produced from the Naval Petroleum Reserves to the extent that such production is authorized by law;

(2) crude oil which the United States is entitled to receive in kind as royalties from production on Federal lands; and

(3) petroleum products acquired by purchase, exchange, or otherwise.

(b) The Secretary shall, to the greatest extent practicable, acquire petroleum products for the Reserve, including the Early Storage Reserve and the Regional Petroleum Reserve in a manner consonant with the following objectives:

(1) minimization of the cost of the Reserve;

(2) orderly development of the Naval Petroleum Reserves to the extent authorized by law;

(3) minimization of the Nation's vulnerability to a severe energy supply interruption;

(4) minimization of the impact of such acquisition upon supply levels and market forces; and

(5) encouragement of competition in the petroleum industry.

[(c)(1) The President shall immediately seek to undertake, and thereafter continue (subject to paragraph (2)), crude oil acquisition, transportation, and injection activities at a level sufficient to assure that crude oil in storage in the Strategic Petroleum Reserve will be increased at an average annual rate of at least 300,000 barrels per day.

[(2) The requirements in paragraph (1) shall cease to apply when the quantity of petroleum products stored within the Strategic Petroleum Reserve is at least 750,000,000 barrels.]

*(c)(1) The President shall, subject to the availability of funding pursuant to Section 167(b)(2) of the Energy Policy and Conservation Act, as amended by Section 1034(a)(1) of the Omnibus Reconciliation Act of 1981 (Public Law 97–35), immediately undertake, and thereafter continue, petroleum products acquisition, transportation, and injection activities at a level sufficient to assure that petroleum products in permanent or interim storage facilities in the Strategic Petroleum Reserve will be increased at an average annual rate of at least 300,000 barrels per day until the quantity of petroleum products stored within the Strategic Petroleum Reserve is at least 500,000,000 barrels.*

*(2) After the Strategic Petroleum Reserve reaches a level of 500,000,000 barrels, the President shall seek to continue petroleum products acquisition, transportation, and injection activities at a level sufficient to assure that petroleum products in permanent or interim storage facilities in the Strategic Petroleum Reserve will be increased at an average annual rate of at least 300,000 barrels per day until the quantity of petroleum products stored within the Strategic Petroleum Reserve is at least 750,000,000 barrels.*

(d)(1) Notwithstanding any other provision of law, no portion of the United States share of crude oil in Naval Petroleum Reserve Numbered 1 (Elk Hills) may be sold or otherwise disposed of other than to the Strategic Petroleum Reserve (either directly or by exchange) during any fiscal year, except as provided in paragraph (2) unless—

(A) the quantity of crude oil in storage within the Strategic Petroleum Reserve is at least 500,000,000 barrels; or

(B) acquisition, transportation, and injection activities for the Reserve are being undertaken for that fiscal year at a level sufficient to assure that crude oil in storage in the Strategic

Petrolum Reserve will be increased at an average rate of at least 100,000 barrels per day for that fiscal year.

(2)(A) The requirements of paragraph (1) shall not apply to the United States share of crude oil in the Naval Petroleum Reserve Numbered 1 which is—

(i) sold to small refiners under section 7430(d) of title 10, United States Code;

(ii) produced, consistent with sound engineering practices, for the purpose of preventing a reduction in the total quantity of crude oil available for ultimate recovery from the Naval Petroleum Reserve Numbered 1, and the amount produced is the minimum necessary to prevent such reduction; or

(iii) produced for national defense purposes under section 7422(b)(2) of title 10, United States Code, pursuant to an authorization of Congress under that section during the preceding 9-month period.

(e)(1) The provisions of subsections (c) and (d) shall not apply (A) if there is in effect an order of the President directing drawdown and distribution pursuant to section 161 or (B) if—

(i) the President has found in his discretion that compliance with such provisions significantly impairs the ability of the United States to respond to a severe energy supply interruption or to meet the obligations of the United States under the international energy program;

(ii) the President has transmitted such finding to the Congress in accordance with section 552, together with a request for a suspension of such provisions; and

(iii) such request has been approved by a resolution by each House of the Congress within 60 days of continuous session after the date of its transmittal, in accordance with the provisions of section 552 applicable to energy conservation contingency plans.

(2) The suspension of application of subsections (c) and (d) under paragraph (1)(B) shall take effect on the date on which a resolution approving that request is adopted by the second House to have so approved that request and shall terminate 9 months thereafter, or such earlier date as is specified in the request transmitted under paragraph (1)(B)(ii).

(3) In applying the provisions of section 552 for purposes of paragraph (1)(B)—

(A) subsections (d)(2) and (d)(7) shall not apply; and

(B) the references to any energy conservation contingency plan shall be considered to refer to a request under this subsection.

(4) The period of any suspension of subsections (c) and (d) under this subsection, and the quantity of any crude oil involved, shall be disregarded in applying the provisions of such subsections for periods following such suspension.

### DRAWDOWN AND DISTRIBUTION OF THE RESERVE

Sec. 161. (a) The Secretary may drawdown and distribute the Reserve only in accordance with the provisions of this section.

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(b) Except as provided in subsections (c) and (f), no drawdown and distribution of the Reserve may be made except in accordance with the provisions of the Distribution Plan contained in the Strategic Petroleum Reserve Plan which has taken effect pursuant to section 159(a).

(c) Drawdown and distribution of the Early Storage Reserve may be made in accordance with the provisions of the Distribution Plan contained in the Early Storage Reserve Plan until the Strategic Petroleum Reserve Plan has taken effect pursuant to section 159(a).

(d) Neither the Distribution Plan contained in the Strategic Petroleum Reserve Plan nor the Distribution Plan contained in the Early Storage Reserve Plan may be implemented, and no drawdown and distribution of the Reserve or the Early Storage Reserve may be made, unless the President has found that implementation of either such Distribution Plan is required by a severe energy supply interruption or by obligations of the United States under the international energy program.

(e) The Secretary may, by rule, provide for the allocation of any petroleum product withdrawn from the Strategic Petroleum Reserve in amounts specified in (or determined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such rules. Such price levels and allocation procedures shall be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 4(b)(1) of the Emergency Petrolum Allocation Act of 1973.

(f) The Secretary may permit any importer or refiner who owns any petroleum products stored in the Industrial Petroleum Reserve pursuant to section 156 to remove or otherwise dispose of such products upon such terms and conditions as the Secretary may prescribe.

### COORDINATION WITH IMPORT QUOTA SYSTEM

SEC. 162. No quantitative restriction on the importation of any petroleum product into the United States imposed by law shall apply to volumes of any such petroleum product imported into the United States for storage in the Reserve.

### DISCLOSURE, INSPECTION, INVESTIGATION

SEC. 163. (a) The Secretary may require any person to prepare and maintain such records or accounts as the Secretary, by rule, determines necessary to carry out the purposes of this part.

(b) The Secretary may audit the operations of any storage facility in which any petroleum product is stored or required to be stored pursuant to the provisions of this part.

(c) The Secretary may require access to, and the right to inspect and examine, at reasonable times, (1) any records or accounts required to be prepared or maintained pursuant to subsection (a) and (2) any storage facilities subject to audit by the United States under the authority of this part.

### NAVAL PETROLEUM RESERVES STUDY

SEC. 164. The Secretary shall, in cooperation and consultation with the Secretary of the Navy and the Secretary of the Interior, develop and submit to the Congress within 180 days after the date of enactment of this Act, a written report recommending procedures for the exploration, development, and production of Naval Petroleum Reserve Number 4. Such report shall include recommendations for protecting the economic, social, and environmental interests of Alaska Natives residing within the Naval Petroleum Reserve Number 4 and analyses of arrangements which provide for (1) participation by private industry and private capital, and (2) leasing to private industry. The Secretary of the Navy and the Secretary of the Interior shall cooperate fully with one another and with the Secretary; the Secretary of the Navy shall provide to the Secretary and Secretary of the Interior all relevant data on Naval Petroleum Reserve Number 4 in order to assist the Secretary in the preparation of such report.

### ANNUAL REPORTS

SEC. 165. The Secretary shall report to the President and the Congress, not later than one year after the transmittal of the Strategic Petroleum Reserve Plan to the Congress and each year thereafter, on all actions taken to implement this part. Such report shall include—

(1) a detailed statement of the status of the Strategic Petroleum Reserve;

(2) a summary of the actions taken to develop and implement the Strategic Petroleum Reserve Plan and the Early Storage Reserve Plan;

(3) an analysis of the impact and effectiveness of such actions on the vulnerability of the United States to interruption in supplies of petroleum products;

(4) a summary of existing problems with respect to further implementation of the Early Storage Reserve Plan and the Strategic Petroleum Reserve Plan; and

(5) any recommendations for supplemental legislation deemed necessary or appropriate by the Secretary to implement the provisions of this part.

### AUTHORIZATION OF APPROPRIATIONS

SEC. 166. (a) There are authorized to be appropriated—

(1) such funds as are necessary to develop and implement the Early Storage Reserve Plan (including planning, administration, acquisition, and construction of storage and related facilities) and as are necessary to permit the acquisition of petroleum products for storage in the Early Storage Reserve or, if the Strategic Petroleum Reserve Plan has become effective under section 159(a), for storage in the Strategic Petroleum Reserve in the minimum volume specified in section 154(a) or 155(a)(2), whichever is applicable;

(2) $1,100,000 to remain available until expended to carry out the provisions of this part to develop the Strategic Petroleum Reserve Plan and to implement such plan which has taken effect pursuant to section 159(a), including planning, administration,

and acquisition and construction of storage and related facilities, but no funds are authorized to be appropriated under this paragraph for the purchase of petroleum products for storage in the Strategic Petroleum Reserve;

(3) such funds for the fiscal year ending September 30, 1978, not to exceed $1,210,000,000, as are necessary to permit the acquisition and storage of petroleum products in the Strategic Petroleum Reserve, in accordance with the storage schedule set forth in the Strategic Petroleum Reserve Plan then in effect in excess of the minimum volume specified in section 154(a), but not in excess of 500,000,000 barrels; and

(4) for the fiscal year ending September 30, 1982, not to exceed $260,000,000 to carry out the provisions of this part, except—

(A) acquisition, transportation, and injection of petroluem products for the Reserve, and

(B) the carrying out of any drawdown and distribution of the Reserve.

(b)(1) On or before the fifteenth day of the second calendar quarter which begins after the date of the enactment of this subsection and every calendar quarter thereafter, the Secretary shall report to the Congress on activities undertaken with respect to the Strategic Petroleum Reserve under the amendments made by the Strategic Petroleum Reserve Amendments Act of 1981, including—

(A) the amounts of petroleum products stored in the Reserve, under contract and in transit at the end of the previous calendar quarter;

(B) the projected fill rate for the Strategic Petroleum Reserve for the then current calendar quarter and the previous calendar quarter;

(C) the average price of the petroleum products acquired during the previous calendar quarter;

(D) existing and projected Strategic Petroleum Reserve storage capacity and plans to accelerate the acquisition or construction of such capacity;

(E) an analysis of any existing or anticipated problems associated with acquisition, transportation, and storage of petroleum products in the Reserve and with the expansion of storage capacity for the Reserve; and

(F) the amount of funds obligated by the Secretary from the SPR Petroleum Account, as well as other funds available for the Reserve, during the previous calendar quarter and in total under the amendments made by such Act.

(2) The first report submitted under paragraph (1) shall include—

(A) a detailed statement on the planned use of the SPR Petroleum Account as well as other funds available for the Strategic Petroleum Reserve;

(B) a description of the current Strategic Petroleum Reserve Plan, including any proposed or anticipated amendments to the Plan; and

(C) detailed plans of the Secretary for acquisition or new construction of storage and related facilities.

### SPR PETROLEUM ACCOUNT

SEC. 167. (a) The Secretary of the Treasury shall establish in the Treasury of the United States an account to be known as the "SPR Petroleum Account" (hereinafter in this section referred to as the "Account").

(b) Amounts in the Account may be obligated by the Secretary of Energy for the acquisition, transportation, and injection of petroleum products into the Strategic Petroleum Reserve, and the drawdown and delivery of petroleum products from the Reserve—

(1) in the case of fiscal year 1982, in an aggregate amount, not to exceed $3,900,000,000, as may be provided in advance in appropriation Acts;

(2) in the case of any fiscal year after fiscal year 1982, subject to section 660 of the Department of Energy Organization Act, in such aggregate amounts as may be appropriated in advance in appropriation Acts; and

(3) in the case of any fiscal year, notwithstanding section 660 of the Department of Energy Organization Act, in an aggregate amount equal to the aggregate amount of the receipts to the United States from the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve under section 161.

Funds available to the Secretary of Energy for obligation under this subsection may remain available without fiscal year limitation.

(c) The Secretary of the Treasury shall provide and deposit into the Account such sums as may be necessary to meet obligations of the Secretary of Energy under subsection (b).

(d) The Account, the deposits and withdrawals from the Account, and the transactions, receipts, obligations, outlays associated with such deposits and withdrawals (including petroleum product purchases and related transactions), and receipts to the United States from the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve under section 161—

(1) shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitation imposed by statute on expenditures and net lending (budget outlays) of the United States; and

(2) shall not be deemed to be budget authority, spending authority, budget outlays, or Federal revenues for purposes of title III of Public Law 93–344, as amended.

*(e) Not to exceed 10 per centum of the total amounts obligated from the Account in any fiscal year may be used to meet expenses related to interim facilities for the storage of petroleum products for the Strategic Petroleum Reserve.*

*(f) Nothing in this part shall require an amendment to the Strategic Petroleum Reserve Plan prior to the storage of petroleum products in interim storage facilities.*

*(g) No action related to the storage of petroleum products in existing facilities for interim storage in the Strategic Petroleum Reserve shall be deemed to be "a major Federal action significantly affecting the quality of the human environment" within the meaning of that*

*term as it is used in section 102(2)(C) of the National Environmental Policy Act of 1969.*

*(h) Petroleum products stored in interim storage facilities pursuant to section 160(c)(1) shall be considered to be in storage in the Strategic Petroleum Reserve.*

## TITLE II—STANDBY ENERGY AUTHORITIES

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## PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM

### INTERNATIONAL OIL ALLOCATION

SEC. 251. (a) The President may, by rule, require that persons engaged in producing, transporting, refining, distributing, or storing petroleum products, take such action as he determines to be necessary for implementation of the obligations of the United States under chapters III and IV of the international energy program insofar as such obligations relate to the international allocation of petroleum products. Allocation under such rule shall be in such amounts and at such prices as are specified in (or determined in a manner prescribed by) such rule. Such rule may apply to any petroleum product owned or controlled by any person described in the first sentence of this subsection who is subject to the jurisdiction of the United States, including any petroleum product destined, directly or indirectly, for import into the United States or any foreign country, or produced in the United States. Subject to subsection (b)(2), such a rule shall remain in effect until amended or rescinded by the President.

(b)(1) No rule under subsection (a) may take effect unless the President—

(A) has transmitted such rule to the Congress;

(B) has found that putting such rule into effect is required in order to fulfil obligations of the United States under the international energy program; and

(C) has transmitted such finding to the Congress, together with a statement of effective date and manner for exercise of such rule.

(2) No rule under subsection (b) may be put into effect or remain in effect after the expiration of 12 months after the date such rule was transmitted to Congress under paragraph (1)(A).

(c)(1) Any rule under this section shall be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 4(b)(1) of the Emergency Petroleum Allocation Act of 1973.

(2) No officer or agency of the United States shall have any authority, other than authority under this section, to require that petroleum products be allocated to other countries for the purpose of implementation of the obligations of the United States under the international energy program.

(d) Neither section 103 of this Act nor section 28(u) of the Mineral Leasing Act of 1920 shall preclude the allocation and export, to other countries in accordance with this section, of petroleum products produced in the United States.

### INTERNATIONAL VOLUNTARY AGREEMENTS

SEC. 252. (a) Effective 90 days after the date of enactment of this Act, the requirements of this section shall be the sole procedures applicable to—

(1) the development or carrying out of voluntary agreements and plans of action to implement the allocation and information provisions of the international energy program, and

(2) the availability of immunity from the antitrust laws with respect to the development or carrying out of such voluntary agreements and plans of action.

(b) The Secretary, with the approval of the Attorney General, after each of them has consulted with the Federal Trade Commission and the Secretary of State, shall prescribe, by rule, standards and procedures by which persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products may develop and carry out voluntary agreements, and plans of action, which are required to implement the allocation and information provisions of the international energy program.

(c) The standards and procedures prescribed under subsection (b) shall include the following requirements:

(1)(A)(i) Except as provided in clause (ii) or (iii) of this subparagraph, meetings held to develop or carry out a voluntary agreement or plan of action under this subsection shall permit attendance by representatives of committees of Congress and interested persons, including all interested segments of the petroleum industry, consumers, and the public; shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency with respect to meetings to carry out a voluntary agreeemnt or to develop or carry out a plan of action) the public; and shall be initiated and chaired by a regular full-time Federal employee.

(ii) Meetings of bodies created by the International Energy Agency established by the international energy program need not be open to interested persons and need not be initiated and chaired by a regular full-time Federal employee.

(iii) The President, in consultation with the Secretary, the Secretary of State, and the Attorney General, may determine that a meeting held to carry out a voluntary agreement or to develop or carry out a plan of action shall not be open to interested persons or that attendance by interested persons may be limited, if the President finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

(B) No meetings may be held to develop or carry out a voluntary agreement or plan of action under this section unless a regular full-time Federal employee is present.

(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present, in writing and orally, data,

views, and arguments at such meetings, subject to any reasonable limitations with respect to the manner of presentation of data, views, and arguments as the Secretary may impose.

(3) A full and complete record, and where practicable a verbatim transcript, shall be kept of any meeting held, and a full and complete record shall be kept of any communication (other than in a meeting) made, between or among participants or potential participants, to develop, or carry out a voluntary agreement or a plan of action under this section. Such record or transcript shall be deposited, together with any agreement resulting therefrom, with the Secretary, and shall be available to the Attorney General and the Federal Trade Commission. Such records or transcripts shall be available for public inspection and copying in accordance with section 552 of title 5, United States Code; except that (A) matter may not be withheld from disclosure under section 552(b) of such title on grounds other than the grounds specified in section 552(b)(1), (b)(3) or so much of (b)(4) as relates to trade secrets; and (B) in the exercise of authority under section 552(b)(1), the President shall consult with the Secretary of State, the Secretary, and the Attorney General with respect to questions relating to the foreign policy interests of the United States.

(4) No provision of this section may be exercised so as to prevent representatives of committees of Congress from attending meetings to which this section applies, or from having access to any transcripts, records, and agreements kept or made under this section. Such access to any transcript that is required to be kept for any meeting shall be provided as soon as practicable (but not later than 14 days) after that meeting.

(d)(1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, and when practicable, in the carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this part. A voluntary agreement or plan of action under this section may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement or plan of action should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Secretary, shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively any immunity which may be conferred by subsection (f) or (k).

(2) Any voluntary agreement or plan of action entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission 20 days before being

implemented; except that during an international energy supply emergency, the Secretary, subject to approval of the Attorney General, may reduce such 20-day period. Any such agreement or plan of action shall be available for public inspection and copying, except that a plan of action shall be so available only to the extent to which records or transcripts are so available as provided in the last sentence of subsection (c)(3). Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under paragraphs (3) and (4) of subsection (e).

(3) A plan of action may not be approved by the Attorney General under this subsection unless such plan (A) describes the types of substantive actions which may be taken under the plan and (B) is as specific in its description of proposed substantive actions as is reasonable in light of known circumstances.

(e)(1) The Attorney General and the Federal Trade Commission shall monitor the development and carrying out of volnutary agreements and plans of action authorized under this section in order to promote competition and to prevent anticompetitive practices and effects, while achieving substantially the purposes of this part.

(2) In addition to any requirement specified under subsections (b) and (c) of this section and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Secretary, shall promulgate rules concerning the maintenance of necessary and appropriate records related to the development and carrying out of voluntary agreements and plans of action authorized pursuant to this section.

(3) Persons, developing or carrying out voluntary agreements and plans of action authorized pursuant to this section shall maintain such records as are required by rules promulgated under paragraph (2). The Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and upon reasonable notice.

(4) The Attorney General and the Federal Trade Commission may each prescribe such rules as may be necessary or appropriate to carry out their respective responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by the antitrust laws or the Antitrust Civil Process Act; and wherever any such law refers to "the purposes of this Act" or like terms, the reference shall be understood to include this section.

(f)(1) There shall be available as a defense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect to actions taken to develop or carry out a voluntary agreement or plan of action by persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products (provided that such actions were not taken for the purpose of injuring competition) that—

(A) such actions were taken—

(i) in the course of developing a voluntary agreement or plan of action pursuant to this section, or

(ii) to carry out a voluntary agreement or plan of action authorized and approved in accordance with this action, and

(B) such persons complied with the requirements of this section and the rules promulgated hereunder.

(2) Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense provided in this subsection shall be available only if the person asserting the defense demonstrates that the actions were specified in, or within the reasonable contemplation of, an approved plan of action.

(3) Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(g) No provision of this section shall be construed as granting immunity for, or as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any act or practice which occurred prior to the date of enactment of this Act or subsequent to its expiration or repeal.

(h) Upon the expiration of the 90-day period which begins on the date of enactment of this Act, the provisions of sections 708 and 708A (other than 708A(o)) of the Defense Production Act of 1950 shall not apply to any agreement or action undertaken for the purpose of developing or carrying out (1) the international energy program, or (2) any allocation, price control, or similar program with respect to petroleum products under this Act or under the Emergency Petroleum Allocation Act of 1973. For purposes of section 708A(o) of the Defense Reduction Act of 1950, the effective date of the provisions of this Act which relate to international voluntary agreements to carry out the International Energy Program shall be deemed to be 90 days after the date of enactment of this Act.

(i) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every 6 months, a report on the impact on competition and on small business of actions authorized by this section.

(j) The authority granted by this section shall terminate [June 1, 1983] *August 1, 1983*.

(k) In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an international energy supply emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section.

(l) As used in this section and section 254:

(1) The term "international energy supply emergency" means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international energy program is required by chapters III and IV of such program, and (B) ending on a date on which he determines that such allocation is no longer required. Such a period may not exceed 90 days, but the President may establish one or more additional 90-day periods by making anew the determination under subparagraph (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

(2) The term "allocation and information provisions of the international energy program" means the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in such program.

### ADVISORY COMMITTEES

SEC. 253. (a) To achieve the purposes of the international energy program with respect to international allocation of petroleum products and the information system provided in such program, the Secretary may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirments specified in this section, such advisory committees shall be subject to the provisions of section 17 of the Federal Energy Administration Act of 1974 (whether or not such Act or any of its provisions expire or terminate before June 30, 1985); shall be chaired by a regular full-time Federal employee; and shall include representatives of the public. The meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(b) A verbatim transcript shall be kept of such advisory committee meetings, and shall be deposited with the Attorney General and the Federal Trade Commission. Such transcript shall be made available for public inspection and copying in accordance with section 552 of title 5, United States Code, except that matter may not be withheld from discloure under section 552(b) of such title on grounds others than the grounds specified in section 552(b)(1), (b)(3), and so much of (b)(4) as relates to trade secrets, or pursuant to a determination under subsection (c).

(c) The President, after consultation with the Secretary of State, the Federal Trade Commisson, the Attorney General, and the Secretary may suspend the application of—

(1) sections 10 and 11 of the Federal Advisory Committee Act,

(2) subsections (b) and (c) of section 17 of the Federal Energy Administration Act of 1974,

(3) the requirement under subsection (a) of this section that meetings be open to the public, and

(4) the second sentence of subsection (b);

if the President determines with respect to a particular meeting, (A) that such suspension is essential to the developing or carrying out of the international energy program, (B) that such suspension relates solely to the purpose of international allocation of petroleum products and the information system provided in such program, and (C) that the meeting deals with matters described in section 552(b)(1) of title 5, United States Code. Such determination by the President shall be in writing, shall set forth a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

## EXCHANGE OF INFORMATION

SEC. 254. (a) (1) Except as provided in subsections (b) and (c), the Secretary, after consultation with the Attorney General, may provide to the Secretary of State, and the Secretary of State may transmit to the International Energy Agency established by the international energy program, the information and data related to the energy industry certified by the Secretary of State as required to be submitted under the international energy program.

(2) (A) Except as provided in subparagraph (B) of this paragraph, any such information or data which is geological or geophysical information or a trade secret or commercial or financial information to which section 552 (b) (9) or (b) (4) of title 5, United States Code, applies shall, prior to such transmittal, be aggregated, accumulated, or otherwise reported in such manner as to avoid, to the fullest extent feasible, identification of any person from whom the United States obtained such information or data, and in the case of geological or geophysical information, a competitive disadvantage to such person.

(B) (i) Notwithstanding subparagraph (A) of this paragraph, during an international energy supply emergency, any such information or data with respect to the international allocation of petroleum products may be made available to the International Energy Agency if otherwise authorized to be made available to such Agency by paragraph (1) of this subsection.

(ii) Subparagraph (A) shall not apply to information described in subparagraph (A) (other than geological or geophysical information) if the President certifies, after opportunity for presentation of views by interested persons, that the International Energy Agency has adopted and is implementing security measures which assure that such information will not be disclosed by such Agency or its employees to any person or foreign country without having been aggregated, accumulated, or otherwise reported in such manner as to avoid identification of any person from whom the United States obtained such information or data.

(3) (A) Within 90 days after the date of enactment of this Act, and periodically thereafter, the President shall review the operation of this section and shall determine whether other signatory nations to the international energy program are transmitting information and data to the International Energy Agency in substantial compliance with such program. If the President determines that other nations are not so complying, paragraph (2) (B) (ii) shall not apply until he determines other nations are so complying.

(B) Any person who believes he has been or will be damaged by the transmittal of information or data pursuant to this section shall have the right to petition the President and to request changes in procedures which will protect such person from any competitive damage.

(b) If the President determines that the transmittal of data or information pursuant to the authority of this section would prejudice competition, violate the antitrust laws, or be inconsistent with United States national security interests, he may require that such data or information not be transmitted.

(c) Information and data the confidentiality of which is protected by statute shall not be provided by the Secretary to the Secretary of State under subsection (a) of this section for transmittal to the International Energy Agency, unless the Secretary has obtained the specific concurrence of the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data. In making a determination to concur in providing such information and data, the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data shall consider the purposes for which such information and data were collected, gathered, and obtained, the confidentiality provisions of such statutory authority, and the international obligations of the United States under the international energy program with respect to the transmittal of such information and data to an international organization or foreign country.

(d) For the purposes of carrying out the obligations of the United States under the international energy program, the authority to collect data granted by sections 11 and 13 of the Energy Supply and Environmental Coordination Act and the Federal Energy Administration Act of 1974, respectively, shall continue in full force and effect without regard to the provisions of such Acts relating to their expiration.

(e) The authority under this section to transmit information shall be subject to any limitations on disclosure contained in other laws, except that such authority may be exercised without regard to—

(1) section 11(d) of the Energy Supply and Environmental Coordination Act of 1974;

(2) section 14(b) of the Federal Energy Administration Act of 1974;

(3) section 12 of the Export Administration Act of 1979;

(4) section 9 of title 13, United States Code;

(5) section 1 of the Act of January 27, 1938 (15 U.S.C. 176(a)); and

(6) section 1905 of title 18, United States Code.

### RELATIONSHIP OF THIS TITLE TO THE INTERNATIONAL ENERGY AGREEMENT

SEC. 255. The purpose of the Congress in enacting this title is to provide standby energy emergency authority to deal with energy shortage conditions and to minimize economic dislocations and adverse impacts on employment. While the authorities contained in this title may, to the extent authorized by this title, be used to carry out obligations incurred by the United States in connection with the International Energy Program, this title shall not be construed in any way as advice and consent, ratification, endorsement, or other form of congressional approval of the specific terms of such program.

## *PART C—ENERGY EMERGENCY PREPAREDNESS*

### *CONGRESSIONAL FINDINGS, POLICY, AND PURPOSES.*

*SEC. 271. (a) FINDINGS—The Congress finds that—*

*(1) a shortage of petroleum products caused by reductions in imports of petroleum products may occur at any time;*

*(2) such a shortage may be sufficiently large to cause severe economic dislocations and hardships, or constitute a serious threat to public health, safety, and welfare; and*

*(3) in the event of such a shortage, reliance on free market pricing and allocation of available petroleum product supplies may not be adequate to mitigate the adverse impacts of the shortage.*

*(b) POLICY—The Congress hereby declares that it shall be the policy of the United States that a Federal comprehensive energy emergency response procedure shall be available for implementation by the President, pursuant to his authorities under existing law other than this Part, as a supplement to reliance on the free market to mitigate the adverse impacts of a shortage of petroleum products on public health, safety, and welfare.*

*(c) PURPOSE—The purpose of this Part is to provide for the preparation of a comprehensive energy emergency response procedure to be available for use by the President under authorities contained in existing law other than this Part;*

### STATUS REPORT

*SEC. 272. (a) (1) The President shall submit to the Congress no later than November 15, 1982—*

*(A) a memorandum of law, subject to subsection (b), describing the nature and extent of the authorities under existing law available to the President for his use in responding to a substantial reduction in the amount of petroleum products available to the United States; and*

*(B) an accompanying report, subject to subsection (b), on the status and schedules for completion of a comprehensive energy emergency response procedure by which the President would implement the authorities described under paragraph (1).*

*(2) The memorandum of law required by subparagraph (1)(A) shall be reviewed and approved by the Attorney General prior to its submission to the Congress.*

*(b) The memorandum of law and the accompanying report submitted to the Congress pursuant to subsection (a) shall*

*(1) include, but not be limited to, the following subjects—*

*(A) activities of the United States in support of the International Energy Program and the December 10, 1981 International Energy Agency agreement entitled 'Decision on Preparation for Future Supply Disruptions' including, but not limited to—*

*(i) the National Emergency Sharing Organization,*

*(ii) Emergency sharing systems; and*

*(iii) the supply right project.*

*(B) activities of the United States pursuant to its energy emergency preparedness obligations to the North Atlantic Treaty Organization;*

*(C) development and use of the Strategic Petroleum Reserve;*

*(D) Government incentives to encourage private petroleum product stocks;*

*(E) reactivation of the Executive Manpower Reserves, including the—*

*(i) Emergency Electric Power Reserve;*

*(ii) Emergency Petroleum and Gas Reserve; and*

*(iii) Emergency Solid Fuels Reserve;*

*(F) energy emergency response management in coordination with State and local governments; and*

*(G) emergency public information activities; and*

*(2) distinguish among—*

*(A) situations involving limited or general war, international tensions that threaten national security, and other Presidentially-declared emergencies;*

*(B) events resulting in activation of the International Energy Program; and*

*(C) events or situations less severe than those described in subparagraphs (A) and (B).*

### *COMPREHENSIVE ENERGY EMERGENCY RESPONSE PROCEDURE*

*SEC. 273. (a) The President is authorized and directed to submit to the Congress no later than December 31, 1982, a comprehensive energy emergency response procedure, subject to subsection (b), which the President would implement, in whole or in part, pursuant to his authorities under existing law other than this Part, in responding to a substantial reduction in the amount of petroleum products available to the United States.*

*(b) The comprehensive energy emergency response procedure shall—*

*(1) specify a procedure for determining appropriate governmental actions in response to international and domestic energy shortages;*

*(2) describe alternative actions available for implementation by the President; and*

*(3) recomend any additional statutory authority necessary for the President to carry out the purposes of this Part.*

*(c) Nothing in this Part, or in the comprehensive energy emergency response procedure submitted pursuant to subsection (b), shall limit the authority of the President under existing law to respond to a reduction in the amount of petroleum products available to the United States.*

* * * * * * *

### *PETROLEUM PRODUCT INFORMATION*

*SEC. 507. The President or his delegate shall, pursuant to authority otherwise available to the President or his delegate under any other provision of law, collect information on the pricing, supply, and distribution of petroleum products at the wholesale and retail levels, on a State-by-State basis. Such information shall be substantially of the same type as was collected during September 1981 by the Energy Information Administration in connection with the Emergency Petroleum Allocation Act of 1973.*

* * * * * * *

## ADDITIONAL VIEWS OF SENATOR HATFIELD

Imposing a mandatory 300,000 barrel per day fill rate of petroleum into the Strategic Petroleum Reserve is not a good strategy. The Department of Energy has estimated that requiring a daily fill rate at this level will cost an additional $3.6 billion for fiscal years 1983 and 1984. Senator Domenici, in his statement to the committee, clearly outlined what impact this fill rate will have on the budget. I agree with his conclusion.

Additionally, this aggressive fill rate program for SPR is embarking on a strategy that has not been tried in the past. The committee is asking the Energy Department to engage in an activity that has not had adequate study to assess the implications of untried interim storage. I believe the imposition of a less aggressive program, with a minimum fill rate not to exceed 200,000 barrels per day into SPR is both fiscally prudent, and follows the safe course of filling the reserve using tested principles.

MARK O. HATFIELD.

# MINORITY VIEWS OF SENATOR DOMENICI AND SENATOR NICKLES

Current law requires that the President must fill the Strategic Petroleum Reserve at a minimum of 100,000 barrels per day (bpd). The President is also required by statute to seek to fill SPR at the rate of 300,000 bpd. The Committee's decision to triple the mandatory minimum fill rate from 100,000 bpd to 300,000 bpd is a mistake. It will cost $3.6 billion more in budget authority in fiscal years 1983 and 1984.

This Administration is committed to filling SPR. Even with only a 100,000 bpd minimum requirement, this Administration in fiscal year 1981 had an actual average fill rate of 292,000 bpd. When the Administration took office there were 110 million barrels of crude oil in underground storage. By the end of this current fiscal year we will have 277 million barrels in the ground. That figure is 10 million barrels more than fiscal year 1982 projections and also reflects more than a 150 percent increase in our reserves. In permanent storage today is the equivalent of 150 days of protection from Arab-OPEC imports.

There are two important drawbacks to setting a minimum fill rate at the unrealistic figure of 300,000 bpd: budgetary impact and a resultant crash program of untried interim storage. As Senator Domenici clearly pointed out in Committee the 300,000 bpd fill rate would cost an additional $3.6 billion of borrowed money over the next two years. Let us point out that the Administration already has budgeted $5.8 billion over those same two years. Therefore with a mandatory minimum of 300,000 bpd there will be the need for a total of $9.4 billion in fiscal years 1983 and 1984.

This is fiscally irresponsible. With such great concern expressed over the size of the Federal deficit, we cannot in good conscience justify our Committee requesting this additional $3.6 billion. The Administration currently has the authority to fill at the 300,000 bpd rate. We encourage the Administration to fill SPR at the highest rate they consider to be responsible, prudent, and practical. One must consider, when determining the fill rate the additional cost of interim storage, the cost of transportation from interim to permanent storage, and the cost of interest being compounded on that borrowed money. Therefore we feel it is unwise for the Congress to mandate a 200 percent increase in the daily fill rate.

As to interim storage, there is a risk in rushing into such a program on so large a scale. There currently are unresolved fraud and abuse allegations regarding substitution of inferior crude oil in SPR. There are security questions which must be addressed when we store our Strategic Petroleum Reserve in various locations above ground or on the high seas in interim storage. A 200,000 bpd minimum would likewise require interim storage but would allow for a gradual phase-in of interim storage.

With these considerations in mind we regret that we are unable to concur with the Committee's views on S. 2332 as amended.

Pete V. Domenici.
Don Nickles.

# APPENDIX

## ENERGY EMERGENCIES PROGRAM INITIATIVES OF THE DEPARTMENT OF ENERGY (PREPARED BY THE DEPARTMENT OF ENERGY)

### INTERNATIONAL ENERGY AGENCY PLANNING

*National Emergency Sharing Organization (NESO) management plan*

The term "National Emergency Sharing Organization" (NESO) was coined by the IEA to denote the body within each IEA country responsible for, in general: (1) liaison with the IEA on matters of international oil allocation during an emergency; and (2) national oil emergency matters. By Executive Order, the Department of Energy functions as the U.S. NESO, and the ongoing missions of a number of DOE Offices include duties which carry out NESO responsibilities.

The goals of this project are: to identify the discrete operations which are implied in the general definition of NESO responsibilities; to associate these operations with specific Federal Governmental offices (some may not be DOE offices); to identify the flow of operations between offices in performing NESO duties; to suggest new or modified operatiing procedures, system flows, communications links which will enhance performance; and to document these operations, responsibilities and systems.

This project will be carried out in conjunction with DOE's preparation for an exercise of the IEA Emergency Sharing System, AST-4, since preparation for such an exercise will empasize NESO operations.

*Fair sharing analysis*

If the Emergency Sharing System (ESS) of the International Energy Program (IEA) is activated, the U.S. could incur an allocation obligation. The Government must, therefore, maintain the ability to share oil internationally during a declared emergency triggering the ES. We have, therefore, structured a project to develop contingency plans to support the voluntary and mandatory offer systems should the U.S. have an allocation obligation.

A fair sharing system is not required under the IEP. However, the International Energy Agency recommends, and the Administration has agreed, that countries should create an atmosphere whereby any requirement to share oil is met and any losses incurred by oil companies are shared equitably.

*Supply right analyses*

The supply right project is a survey of options such as import quotas or tariffs that the USG can implement to reduce or eliminate the likelihood that an allocation obligation would be incurred when the IEA emergency sharing system is triggered. An allocation obligation is the amount of oil above or below a country's supply right, that a country is obligated to offer to the IEA's emergency sharing system.

### *Allocation system test-4 (AST-4)*

Periodically the IEA Secretariat, in concert with IEA member and the Reporting Companies (i.e., oil companies which participate directly in IEA activities and have signed the voluntary agreement on the International Energy Program), conduct an exercise of the IEA Emergency Sharing System in order to assess the operational effectiveness of the system, to train persons in the operation of the system, and to evalute the ability of IEA nations to respond to disruptions including the effects of domestic response measures on the international sharing system. These exercises are known as Allocation System Tests.

This project encompasses EP's involvement in both the planning for and execution of the IEA's fourth Allocation System Test (AST-4). Planned activities include: overall exercise design—EP is a member of the U.S. delegation to the international AST-4 Design Group; development of U.S. exercise goals and objectives—what does U.S. intend to get out of the exercise?; selection and training of U.S. exercise participants—both "players" and "test evaluators" will need to be prepared; preparation of necessary econometric models needed to simulate disruption impacts; data preparation coordination—EIA has the lead to provide exercise data but oversight is required; and arrangement for physical facilities and communication equipment required for the exercises—in coordination with DOE AS/MA.

## NORTH ATLANTIC TREATY ORGANIZATION PLANNING

### *National Oil Board plan*

The United States is obligated by the North Atlantic Treaty to respond to various peacetime and wartime conditions affecting members of the North Atlantic Treaty Organization (NATO). Within the NATO organization, the Petroleum Planning Committee (PPC) has the task of developing plans for the distribution of available oil supplies among NATO members if there are supply shortages during crisis or war. These plans would be activated by a decision of the North Atlantic Council (NAC).

### *WINTEX-CIMEX test*

The Office of Energy Emergencies, as part of its responsibility to support the U.S. commitment to the North Atlantic Treaty Organization (NATO) Civil Emergency Planning Organization, is in the process of preparing for an upcoming test called WINTEX-CIMEX. All NATO members are expected to participate.

## STRATEGIC PETROLEUM RESERVE PLANNING

### *Distribution management plan*

The SPR presently has five sites from which it can distribute crude oil. These sites are connected to interstate and local pipelines and waterways.

The areas where SPR oil will actually be delivered depends upon the nature of the shortage and the sales method and drawdown policy existing at the time of a drawdown. Detailed procedures related to development of drawdown policies and operational requirements will be developed by late summer 1982.

*Use policy analysis*

This project will examine the objectives of SPR use policy, both prior to and during an interruption. For example, prior to an interruption, U.S. objectives may include: (a) deterrence, (b) influencing preparedness on the part of our allies, and (c) influencing private sector preparedness. During an interruption, U.S. objectives might include: (a) limiting economic loss, (b) maintaining national security, and (c) minimizing policy conflicts between U.S. and allied nations. The project will examine SPR use policy in terms of its co[illegible] to national objectives, and in the context of overall energy policy. Consideration will be given to the interactions between SPR use policy and: (a) private sector inventory policies, and (b) oil stockpile policies of other IEA signatories.

*"Phase B" exercise*

A Phase "B" test of the Strategic Petrolum Reserve (SPR) will be held as part of the preparation of the SPR Distribution Manual. Tests of the SPR have been divided into three phases and several levels. Phase A tests refer to physical drawdown tests which demonstrate the integrity and capacity of the equipment and sites. Two successful such tests have been conducted in the past. Phase B tests refer to tests of management, administration and non-physical procedures. Phase C tests combine both A and B type tests. Tests may also be conducted at several levels: a single site (such as Bryan Mound), a group of sites (such as the Capline Group) or all of the sites. The test currently planned will cover management, policy and administrative procedures for the entire SPR. It will simulate two-procurement cycles, the equivalent of about a two months sales period.

## PRIVATE OIL STOCKS

*Short-term adequacy of stocks*

An examination will be made, on a quick turnaround basis, of recent changes in, and present levels of, primary, secondary, and tertiary domestic oil stocks and foreign stocks. A rough projection will be made of changes in stocks over the next year. An assessment will be formed as to whether stocks are adequate to deal with a near-term supply interruption and, if not, what measures could be taken to provide a rapid buildup of inventories.

*Incentives for private stocks*

An explanation of factors influencing private oil inventory decisions. An evaluation of alternative Federal policies for encouraging a buildup of private petroleum safety stocks (stocks above normal working requirements) during normal market conditions and use of those stocks during supply emergencies. A set of plausible Federal incentive programs will be identified. Estimates will be made of the impact of each program on private stocks and of the year-by-year budgetary costs.

### VULNERABILITY ASSESSMENTS

*Electric power*

Assessment of the potential for disruption of the supply of electric power to military bases and defense industrial facilities by sabotage against the commercial electric power systems. Includes a series of case studies of selected defense facilities, with analyses of (i) the impact of power outages of various lengths on military effectiveness during mobilization or war, and (ii) the likely duration of outages resulting from various types of coordinated acts of sabotage against the power system. Also includes investigation of related issues such as intelligence estimates of threat, institutional responsibilities, state-of-the-art sabotage techniques, and replacement times for critical system components.

*Pipeline gas*

Assessment of the vulnerability of petroleum and natural gas pipelines to concerted sabotage attacks. The attacks may occur in time of peace or war or during the critical period immediately prior to declaration of war.

### CONTINUITY OF GOVERNMENT

*REX-82 Bravo*

REX-82 consists of two one-week exercises subtitled ALPHA and BRAVO. ALPHA exercises usually involve a general war scenario during and around the period of an immediate attack. Participation is at the Special Facility of the Federal Emergency Management Agency (FEMA). BRAVO usually involves industrial mobilization considerably before a war and is played at regular duty stations. These exercises are part of a biennial series conducted by FEMA among the Federal Civil Agencies in conjunction with Joint Chiefs of Staff Command post exercises.

The objectives of these exercises are to improve plans and preparedness for Continuity of Government (COG) and civil mobilization.

### DEFENSE PREPAREDNESS PLANNING

*Jones Act waiver procedures*

To implement procedures jointly with Bureau of Customs, Department of Treasury, which would preimplement or otherwise provide for a semi-automatic issuance of waivers of the Coastwise trading laws prohibiting the use of foreign flag vessels from engaging in domestic transport.

*DPA invocation procedures*

In accordance with instruction recently obtained from the DAS/EE, the Plans Development and Testing Division, Office of Energy Contingency Planning, has begun to assemble an Interagency Task Group for the purpose of preparing a comprehensive procedures manual which will replace current regulations dealing with allocation of crude oil, petroleum products and coal to the DOD under the DPA.

*Major military emergency planning*

In addition to the DPA and waiver of the Jones Act plans described separately, this office is pursuing these additional defense related activities: DPA amendment; dialogue with DOT on transport claimancy program; coordination of DPA activities with revitalization of the Executive Reserve Programs: participation in DOD's Military Traffic Management Command's (MTMC) military transport COREX (contingency response) exercises; participation on Defense Energy Action Group; participation in DOD's Studies, Analysis and Gaming Agency's (SAGA) FUELEX energy crisis simulation; Memorandum of Agreement (MOA) with DOC delineating DOE/DOC responsibilities for fuel/petrochemical supply under DPA; and participation on NATO National Oil Board Task Group.

*FUELEX activities*

The Studies, Analysis, and Gaming Agency (SAGA) prepares and conducts major political-military energy crisis simulations known as FUELEX, in which DOE, represented by the Office of Energy Emergencies, participates. The purpose of FUELEX is to provide the Department of Defense (DOD) and the civilian (both Government and private) energy community with an understanding of probable defense fuel requirements during an emergency and to have the joint military and civilian teams work within current regulatory, legislative, and policy guidelines to resolve any problems.

*Mobilization response study*

The purpose of the mobilization response study is to determine whether a given level of military activity is feasible from an energy resource perspective. This analysis would be similar to a military assessment of the Nation's ability to fight and defeat a given opponent. The study will also try to estimate the proportion of available energy which realistically should be allocated to defense activities in war time.

*Executive reserve training*

The Emergency Reserve Programs include three separate, but interrelated National Defense Executive Reserve units:

Emergency Electric Power Administration (EEPA);
Emergency Petroleum and Gas Administration (EPGA);
Emergency Solid Fuels Administration (ESFA).

These executive reserve units, authorized under the Defense Production Act of 1950 (DPA), are intended to monitor and, if necessary, direct the operations of the electric power, petroleum and gas, and solid fuels (coal/coke) industries in the event of conventional or nuclear war, or in response to significant threats ot the Nation's security. The role of DOE is to insure that these units are prepared by instituting and maintaining suitable recruitment, training and administrative programs. From 1977 (when the units were transferred to DOE from the Department of the Interior) until recently, these units were dormant. The major mission in fiscal year 1982 and fiscal year 1983 is to revitalize them and bring each to a state of adequate preparedness.

## EMERGENCY RESPONSE MANAGEMENT

*Energy situation reporting system (ESRS)*

The Energy Situation Reporting System has two basic elements, the Energy Situation Report, and a supporting data base, called "Tables". The Energy Situation Report is a daily publication. It includes highlights of recent events affecting U.S. energy supply availability, data on energy supply and demand, and items which may develop into problems in the near future.

*Management operating procedures*

The Plans Development and Testing Division and the National Security and Continuity of Government Branch are coordinating the development of standard operating procedures and suitable operation facilities for EP and DOE management of energy emergencies. There are two aspects to this project: codification of the operating procedures of DOE and external entities (Federal, State, local, and private sector) in the management of energy emergencies; and the design, development, and installation of operations support systems (equipment, communications, and space) to assist the managers in their decision-making during energy emergencies.

*Emergency operating facilities*

This program addresses the many preparedness actions required for effective response to energy emergencies and the emergency response (operations) activities during actual emergencies. The most important continuing activity of this program is the identification and training of personnel assigned to energy emergency operations teams.

Included in this program is the receipt, docketing and processing of application for emergency electric power interconnection, power delivery and/or generation under Section 202(c) and 202(d) of the Federal Power Act. Such applications must be analyzed and decisions recommended in an expeditious manner.

The development, maintenance and 24-hour-a-day operation of an Alert Coordination Officer System, so as to assure the ability to receive emergency alerts at all hours is an integral element of this program. The determination, acquisition and maintenance of the needed reference documents for emergency operations is a continuing functional activity of this program. In addition, the establishment and maintenance of an Energy Emergency Operations Center is a function of this program.

## ECONOMIC ANALYSIS

*Regional econometric modeling*

The DOE has commissioned a study, being conducted by the Oak Ridge National Laboratory, to develop a system specification for a regional forecasting/impact assessment model which is tailored to the programmatic responsibilities of Emergency Planning.

*Economic effects to supply disruptions*

A substantial disruption in the supply of petroleum can be expected to cause large, rapid increases in petroleum prices. These price increases have the potential for generating both severe adverse macroeconomic impacts and cases of individual hardship, in the short term, before adequate adjustments are made. In such circumstances, it may be appropriate for the Government to act to provide a macroeconomic stimulus and/or to alleviate undue hardship. This project will examine alternative Federal programs and estimate their effectiveness in providing an economic stimulus and/or reducing perceived hardship.

*Risk assessments*

Analyzing available information and obtaining additional information necessary to determine the likelihood and potential impacts of energy emergencies related to electric power, petroleum, natural gas and solid fuels.

Also, assessment of the risk to supplies of crude oil and petroleum products, quantifying the preliminary impact of the petroleum shortage and recommending the appropriate action to mitigate such a shortfall.

## PUBLIC INFORMATION PLANNING

*Emergency public information plan*

The public information plan, when completed will consist of the following:

*Interim emergency public information plan.*—The Interim Emergency Public Information Plan will consist of a set of public information procedures developed within the framework of DOE's existing organizational structure and information products. The IEPIP will include detailed information on existing resources and the ways in which they can be utilized to inform the public during energy emergencies. It will be in force until superseded by the final plan (below), which will contain more exhaustive procedural and policy information for dealing with an energy emergency.

*Emergency public information plan.*—Includes procedures to be followed to provide timely, accurate, and consistent information to the public about the extent and impact of an energy emergency and the actions the public, State, and local governments might take in coping with such an emergency. It will also seek to educate the public about U.S. vulnerability to petroleum supply interruptions and Government policies and procedures for ameliorating the effects of such interruptions. The plan will incorporate an Operations Manual which will detail data sources, target audiences, data verification methods, and internal DOE procedures for data dissemination, and procedures for coordination with external agencies and associations.

An intraagency Task Force has been established to develop both the interim and final plans. To date, members have been tasked with providing assessments of their organization's information flow and data/analytical products appropriate for public dissemination.

*Public Information Operations Manual*

One of the products associated with the Emergency Public Information Plan, the manual will contain specific information as:

DOE emergency organization to conduct public information activities.

Target audiences and data required by each audience.

Specific data items for distribution, with data item descriptions.

Data verification/validation procedures.

Methods for rapid communications/liaison with the States and other Federal agencies.

*Communications network*

Effective response to an energy emergency requires extensive information and data exchanges through rapid telecommunication channels among the pertinent energy supply organizations, the affected states, FEMA Regional Centers and the DOE Regional Management Offices. State Energy Offices and State Disaster Control Centers or Emergency Operations Centers serve as the point of state contact. Currently, communications among these parties is limited to the telephone and an electronic mail system that currently connects most of the State Energy Offices to the Office of Energy Emergency Operations. The integration and enhancement of the existing communication systems and the addition of both some links and equipment are necessary to assure that timely and effective two-way communication of information. Funds for annual maintenance charges are necessary such that any telephone or other equipment is properly maintained. It is the intention of this activity to assure the most complete use of the existing DOE communications systems and the FEMA regional emergency communications links.

*Liaison with States, local, industry*

The liaison program provides a focal point within the Office of Energy Emergencies (EE) for establishing and maintaining coordination with state and local governments, other Federal agencies and key segments of the private sector on energy emergency programs. It also provides a forum for continuing dialogue with diverse groups on key issues, fosters cooperation and consistency in planning at all levels, facilitates information transfer between groups and promotes private and public sector involvement in Federal energy emergency planning activities.

This program initiates and implements outreach programs, expands and maintains communication networks for timely information exchange, evaluates the impacts of DOE programs on outside groups by inviting participation on in-house task forces, and maintains directories of federal and non-federal officials with energy emergency responsibilities.

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